



PTO/SB/21 (03-03)

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

| | |
|------------------------|------------------|
| Application Number | 10/062,798 |
| Filing Date | 01/31/2002 |
| First Named Inventor | Jack J. Johnson |
| Art Unit | 3624 |
| Examiner Name | R. C. Weisberger |
| Attorney Docket Number | 33472/1 |

Total Number of Pages in This Submission

ENCLOSURES (Check all that apply)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance Communication to a Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below): |
|--|---|--|

Remarks

PETITION TO MAKE SPECIAL UNDER CFR 1.102D

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JUL 17 2003

GROUP 3600**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**Firm or Individual
McCarter & English, LLP
Allen N. Friedman, Esq.

Signature

Date

Allen N. Friedman #25,973
07/10/2003**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 07/10/2003

Typed or printed
Margaret Epps

Signature

Margaret Epps

Date

7/10/03

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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EPM TC 3600
FINAL SEARCH DATE 7.10.03
DELIVER TO GOVT DATE 7.10.03



PTO/SB/17 (05-03)
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FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 130,00

Complete if Known

Application Number 10/062,798
Filing Date 01/31/2002
First Named Inventor Jack J. Johnson
Examiner Name R. C. Weisberger
Art Unit 3524
Attorney Docket No. 33472/1

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JUL 17 2003

GROUP 3600

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit
Account
Number
Deposit
Account
Name

501402

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge any additional fee(s) during the pendency of this application
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

| Large Entity | Small Entity | Fee Code | Fee (\$) | Fee Description | Fee Paid |
|--------------|--------------|----------|----------|------------------------|----------|
| 1001 | 2001 | 750 | 375 | Utility filing fee | |
| 1002 | 2002 | 330 | 165 | Design filing fee | |
| 1003 | 2003 | 520 | 260 | Plant filing fee | |
| 1004 | 2004 | 750 | 375 | Reissue filing fee | |
| 1005 | 2005 | 160 | 80 | Provisional filing fee | |

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims -20** = X =
Independent Claims -3** = X =
Multiple Dependent =

| Large Entity | Small Entity | Fee Code | Fee (\$) | Fee Description | Fee Paid |
|--------------|--------------|----------|----------|--|----------|
| 1202 | 2202 | 18 | 9 | Claims in excess of 20 | |
| 1201 | 2201 | 84 | 42 | Independent claims in excess of 3 | |
| 1203 | 2203 | 280 | 140 | Multiple dependent claim, if not paid | |
| 1204 | 2204 | 84 | 42 | ** Reissue independent claims over original patent | |
| 1205 | 2205 | 18 | 9 | ** Reissue claims in excess of 20 and over original patent | |

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

| Fee Code | Fee (\$) | Fee Code | Fee (\$) | Fee Description | Fee Paid |
|----------|----------|----------|----------|--|----------|
| 1051 | 130 | 2051 | 65 | Surcharge - late filing fee or oath | |
| 1052 | 50 | 2052 | 25 | Surcharge - late provisional filing fee or cover sheet | |
| 1053 | 130 | 1053 | 130 | Non-English specification | |
| 1812 | 2,520 | 1812 | 2,520 | For filing a request for <i>ex parte</i> reexamination | |
| 1804 | 920* | 1804 | 920* | Requesting publication of SIR prior to Examiner action | |
| 1805 | 1,840* | 1805 | 1,840* | Requesting publication of SIR after Examiner action | |
| 1251 | 110 | 2251 | 55 | Extension for reply within first month | |
| 1252 | 410 | 2252 | 205 | Extension for reply within second month | |
| 1253 | 930 | 2253 | 465 | Extension for reply within third month | |
| 1254 | 1,450 | 2254 | 725 | Extension for reply within fourth month | |
| 1255 | 1,970 | 2255 | 985 | Extension for reply within fifth month | |
| 1401 | 320 | 2401 | 160 | Notice of Appeal | |
| 1402 | 320 | 2402 | 160 | Filing a brief in support of an appeal | |
| 1403 | 280 | 2403 | 140 | Request for oral hearing | |
| 1451 | 1,510 | 1451 | 1,510 | Petition to institute a public use proceeding | |
| 1452 | 110 | 2452 | 55 | Petition to revive - unavoidable | |
| 1453 | 1,300 | 2453 | 650 | Petition to revive - unintentional | |
| 1501 | 1,300 | 2501 | 650 | Utility issue fee (or reissue) | |
| 1502 | 470 | 2502 | 235 | Design issue fee | |
| 1503 | 630 | 2503 | 315 | Plant issue fee | |
| 1460 | 130 | 1460 | 130 | Petitions to the Commissioner | 130.00 |
| 1807 | 50 | 1807 | 50 | Processing fee under 37 CFR 1.17(q) | |
| 1806 | 180 | 1806 | 180 | Submission of Information Disclosure Stmt | |
| 8021 | 40 | 8021 | 40 | Recording each patent assignment per property (times number of properties) | |
| 1809 | 750 | 2809 | 375 | Filing a submission after final rejection (37 CFR 1.129(a)) | |
| 1810 | 750 | 2810 | 375 | For each additional invention to be examined (37 CFR 1.129(b)) | |
| 1801 | 750 | 2801 | 375 | Request for Continued Examination (RCE) | |
| 1802 | 900 | 1802 | 900 | Request for expedited examination of a design application | |

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 130.00

SUBMITTED BY

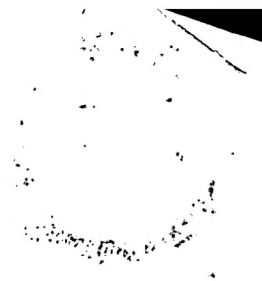
(Complete if applicable)

Name (Print/Type) Allen N. Friedman Registration No. 25,973 Telephone (973) 639-69
Signature [Signature] (Attorney/Agent) Date 07/10/2003

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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OFFICIAL

Docket #33472/1

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Serial No.: 10/062,798
Filed: 01/31/2002

Examiner: R. C. Weisberger
Art Unit: 3624

TITLE: **BIDDING FOR ENERGY SUPPLY**

INVENTORS: Jack J. Johnson, Summit, NJ
William F. Coyle, Summit, NJ

Commissioner of Patents and Trademarks
P.O. Box 1450
Washington, DC 20231

PETITION TO MAKE SPECIAL UNDER 37 CFR§1.102d

Sir:

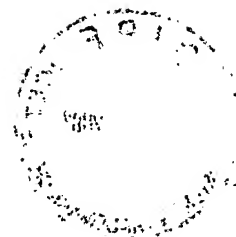
The Applicants hereby petition for advancement of the prosecution of the above-entitled Application on the following grounds:

- A. There was actual infringement of some or all of the Application's claims on February 3, 2003, subsequent to publication of the Application on January 30, 2003 and service of notice to the infringers prior to the infringement, thus accruing Provisional Rights.
- B. The infringers are planning to commit other infringing acts in February of 2004 and in subsequent years.
- C. Applicants consider that the February, 2003 acts unquestionably infringe the Application's claims. Applicants have compared the Application's claims with the infringing acts as described in documents governing the

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auction, published by the New Jersey Board of Public Utilities (BPU) and the four energy distribution companies for whom the auction was held.

- D. The art was thoroughly searched by the USPTO in Class 705/400 and 379/112,115 during the prosecution of the grandparent, Application Serial #09/023,968, which issued as US Pat. #6,047,274. While the parent Application, Ser. #09/542,451, was a CIP of the grandparent, the claims of this Application are fully supported in the specification of the grandparent and fall generally within the scope of the issued claims of the grandparent. Further, since the chain of continuity is unbroken, the claims of this Application are entitled to the February 24, 1997 priority of the grandparent application. Applicants know of no citable art that is closer to their claimed invention than the art cited in the prosecution of the grandparent application and the parent application. The parent application is scheduled to issue as US Pat. #6,598,451 on July 22, 2003.
- E. In the Notice of Allowability issued for the grandparent application, the Examiner explained in detail why he considered the claims of that application allowable over the prior art. Applicants have reviewed the Examiner's reasons for allowance and consider those reasons equally applicable to the claims of this Application. In particular, none of the cited references disclose or suggest an open energy auction of the claimed type.

F. In the event that the Examiner considers that the apparatus claims of Group II, set forth below, form a separate invention from the method claims included in the Application, the Applicants elect the method claims of Group I, without traverse, but with a view to the possible filing of the Group II claims in a Divisional Application.

ELECTION OF CLAIMS

The claims are grouped as between method claims and apparatus claims as follows:

Group I (Method Claims)

Claim 1, Claims 44-83, Claims 92-136,
Claims 146-156, and Claims 158-172.

Group II (Apparatus Claims)

Claims 84-91, Claims 137-145 and Claim 157.

STATEMENT OF THE INVENTION

The claimed invention is a method and apparatus for conducting an automated auction for the provision of energy to energy consumers by soliciting bids from energy providers, processing the bid information in accordance with auction rules, distributing bid information from each of the bidding providers to other bidding providers and selecting providers to supply energy to energy consumers.

STATEMENT OF INFRINGEMENT

An auction undoubtedly infringing at least some of the claims of this Application was held in New Jersey during February 3rd and 4th of 2003. The auction was authorized by the New Jersey Board of Public Utilities in a Decision and Order issued on December 18, 2002 (Exhibit I). The Decision and Order favorably mentions the results of a prior auction held in

February of 2002 (See, for example, page 7 of Exhibit I). The conduct and results of this auction were announced by the BPU in its February 5, 2003 press release and reported in the press on February 6, 2003. (Exhibit II)

This auction was held subsequent to the republication of this Application on January 30, 2003 (Pub. No.: US 2003/0023540A2). This Application, the subject of this petition, contains the claims present in the republication (Exhibit III). (Note that Claim 1 and Claims 44 – 154, contained in the Preliminary Amendment filed in the Application on September 18, 2002, are present in the republication and Claims 155-172 were subsequently filed in Second and Third Preliminary Amendments, all claims being fully supported in the grandparent application, now US Pat.#6,047,274, as well as in the parent application, soon to issue as US Pat. #6,598,451.)

On January 30, 2003, concurrent with the republication of this Application, parties to the New Jersey energy auction were served with notice of the republication and a copy of the published claims. Exhibit IV is a copy of the letter sent to Ira H. Donner, Esq., attorney for the four energy distribution companies for whose benefit the auction was held. Similar letters were sent to the New Jersey Board of Public Utilities and its members.


By order of June 20, 2003 the New Jersey BPU ordered the same energy distribution companies to submit proposals for the procurement of electric energy supply for the next year (Exhibit V). In response, on July 1, 2003 these four energy distribution companies submitted a joint proposal to conduct energy auctions similar to the previous two auctions, to be held in February 2004 and again in 2005 and 2006 (Exhibit VI). Since the 2002 and 2003 auctions were considered by the Board and the energy distribution companies to have been successful, the Applicants expect that, at a minimum, the infringers will utilize another infringing auction process in the procurement of the next year's energy supply. Past infringement, this expected

pattern of continued infringement, and the Applicants' accrued Provisional Rights make it imperative that the Application being considered here be advanced on the Examiner's schedule and be prosecuted to conclusion in the near future.

Applicants respectfully urge that the above statements and attachments fulfill the requirements of 37CFR §1.102 and MPEP 708.02 and request advancement of the prosecution of this Application.

If, during consideration of this petition, or any ensuing prosecution of the instant Application, the Office considers that a telephone interview would, in any way, advance the prosecution of this Application, the Office is urged to call the undersigned attorney at (973)639-6946.

Respectfully,
Jack J. Johnson
William F. Coyle

By 
Allen N. Friedman
Reg. #25,973

Correspondence to:

Allen N. Friedman, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
(973) 622-4444

NWK2: 1065627.01

Agenda Date: 11/6/02
Agenda Item: 2A

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

I
/M/O The Provision Of Basic) ENERGY
Generation Service Pursuant)
To The Electric Discount And) DECISION AND ORDER
Energy Competition Act,)
N.J.S.A. 48:3-49 et seq.) Docket No. EX01110754 and EO02070384

(Service List Attached)

BY THE BOARD:

The Electric Discount and Energy Competition Act of 1999 ("EDECA" or "Act"), N.J.S.A. 48:3-49 et seq., provides that for at least three years from the starting date of electric retail choice and until the Board finds it to be no longer necessary and in the public interest, electric public utilities shall provide basic generation service ("BGS"). N.J.S.A. 48:3-57(a).

After an extensive proceeding, the Board, by Order dated December 11, 2001, determined that for Year 4 of the Transition Period (August 1, 2002-July 31, 2003), the electric utilities should continue to provide BGS, with the procurement of supply to meet the full electricity requirements of BGS customers to be achieved via an auction process. The Board further determined that a further review as to whether to make BGS available on a competitive basis for the period beginning August 1, 2003 ("post-Transition Period") would be undertaken pursuant to a separate scheduling order.

By Order dated January 10, 2002, the Board solicited information from interested parties so that it could make a timely decision whether BGS should be provided on a competitive basis for the post-Transition Period, and what should be the appropriate pricing mechanism for BGS after August 1, 2003. The Board issued a list of questions concerning competitive BGS to all interested parties. Responses were received from the following parties: Public Service Electric & Gas Company ("PSE&G"); Conectiv Power Delivery ("Conectiv"); Williams Energy Marketing & Trading Co. ("Williams"); Independent Energy Producers of New Jersey ("IEPNJ"); Division of the Ratepayer Advocate ("RPA"); National Energy Marketers Association ("NEMA"); Jersey Central Power & Light Company ("JCP&L"); AES NewEnergy Inc. ("AES"); Rockland Electric Company ("Rockland"); Reliant Resources, Inc. ("Reliant"); the New Power Co. ("New Power"); and Mid-Atlantic Power Supply Assoc. ("MAPSA"). The January 10, 2002 Order also directed Staff to meet with interested parties in a working group-like setting to discuss the major issues, explore possible areas of common ground, determine where differences exist and identify potential solutions.

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Upon completion of the two working group meetings and review of the written comments, the Board determined that additional information in the form of formal, detailed proposals was required from the parties. Accordingly, by Order dated June 6, 2002, the Board ordered the electric utilities and other interested parties to file formal proposals by July 1, 2002, on how BGS should be procured for the post-Transition Period. The Board further ordered that the proposals follow a list of guidelines that reflected the areas of concern initially raised by the parties in their written comments and at the working group meetings. The Board also adopted a procedural schedule, which would enable a Board decision on this issue in the fourth quarter of 2002. Among other things, the procedural schedule provided for discovery, public hearings, and the filing by all interested parties of comments and reply comments.

On July 1, 2002, the Board received numerous proposals on how to proceed with the BGS procurement process for the post-Transition Period, from interested parties. A joint proposal and company specific addenda were received from the electric distribution companies ("EDCs"), including PSE&G, JCP&L, Conectiv, and Rockland ("Joint EDC Proposal"). In addition, proposals were filed by the RPA, MAPSA, Williams, Consolidated Edison Solutions, Inc. ("CESI") and Consolidated Edison Energy, Inc. ("CEEI"), Constellation NewEnergy, Inc., formerly AES NewEnergy, Inc. ("Constellation"), Pepco Energy Services, Inc. ("Pepco"), New Jersey Large Energy Users Coalition ("NJLEUC"), IEPNJ, Reliant, Select Energy, Inc. ("Select"), Duke Energy Trading and Marketing, LLC ("Duke"), and the New Jersey Food Council ("NJFC").

JCP&L also submitted a separate filing, dated July 2, 2002, proposing a retail pilot program to be implemented in conjunction with the BGS procurement process proposed in the Joint EDC Proposal.

At the July 12, 2002 Board agenda meeting, the Board authorized the issuance of a Request for Proposals ("RFP") to obtain the services of a consulting firm to provide advice to the Board and its Staff on the BGS procurement process for the post-Transition Period. At the August 29, 2002 Board agenda meeting, the Board determined to engage the consulting firm of Charles River Associates ("CRA") to review the July 1, 2002 proposals, and provide oversight of any auction process approved by the Board.

On September 10, 2002, a legislative-type hearing was held at the Board's Newark office. The hearing was chaired by Commissioner Butler. Commissioner Hughes also participated in the proceeding. All interested parties were allowed to present their positions for the record. The parties who presented positions were the EDCs, the RPA, Reliant, IEPNJ, Constellation, MAPSA, Pepco, NJLEUC, and NJFC.

A number of informal settlement conferences were also held on September 11, 17, 18, and 19, in an attempt to find common ground among the participants on as many issues as possible.

On September 23, 2002, pursuant to the procedural schedule that had been established, Board Staff ("Staff") filed its initial position. The EDCs and all other interested participants also filed initial comments, which, in some cases, included modifications to their respective initial positions. Besides Staff and the EDCs, the parties filing initial comments were the RPA, NJLEUC, IEPNJ, MAPSA/Pepco (Joint), TXU Energy Trading Co. ("TXU"), Conectiv Energy Supply, Inc., DTE Energy Trading, Inc. ("DTE"), Constellation, Reliant, Sempra Energy Trading Corp. ("Sempra"), and Miecoco, Inc. ("Miecoco").

At its regularly scheduled public agenda meeting of October 3, 2002, the Board amended the procedural schedule to extend the time for Reply Comments until October 11, 2002.

On October 11, 2002, Reply Comments were filed by Staff, the EDCs, JCP&L (company-specific comments), RPA, Duke, MAPSA/Pepco (Joint), NJLEUC, Constellation, IEPNJ, Reliant, PJM, Natural Resources Defense Council ("NRDC"), Chemistry Council of New Jersey ("CCNJ"), and J. Aron & Company ("Aron").

PARTICIPANT PROPOSALS, COMMENTS AND REPLY COMMENTS

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely focused on last year's auction process and on the Joint EDC Proposal as the baseline for proposing specific modifications and/or additions. For this reason, and because it forms the basis of much of the discussion in this Order and because, with the modifications described below, the Joint EDC Proposal contains many elements that will be incorporated into the BGS procurement process which the Board will approve herein, the Board will summarize, in this Order, the main features of the EDCs' July 1, 2002 filing. The Board will not, in this Order, separately summarize each party's position in similar detail. The Proposals, Comments and Reply Comments filed by all parties identified above are available on the Board's webpage at www.bpu.state.nj.us, under Energy.

JOINT EDC PROPOSAL

On July 1, 2002, the four EDCs filed a Joint EDC Proposal for BGS, consisting of three parts: (1) a Proposal for Basic Generation Service Beyond July 31, 2003; (2) EDC-specific addenda; and (3) a form of BGS Supplier Master Agreement.

The EDCs have jointly proposed two simultaneous, multi-round, descending clock auctions ("Auctions") for the procurement of supply to meet the full electricity requirements (*i.e.*, energy, capacity, ancillary services, transmission, etc.) of retail customers that have not chosen a Third Party Supplier ("TPS").

One Auction would be to procure service for the approximately 1750 largest commercial and industrial ("C&I") customers on the utility systems of ACE, JCP&L and PSE&G through an hourly energy price ("HEP") Auction¹. The EDCs propose to move these largest customers to real-time, hourly pricing, using interval meters. The customers in this category would represent approximately 2460 megawatts ("Mw") of load procured through bidding on approximately 49 full-requirements tranches of 50 Mw each. Rockland did not propose to have an hourly pricing class of customers.

The second Auction would be to procure service for all other customers of all four EDCs through a fixed price ("FP") Auction ("BGS-FP Auction") for approximately 15,460 Mw of load to be procured through approximately 154 full-requirements tranches of 100 Mw each. These customers would be priced at fixed tariff rates determined by converting the auction prices to BGS-FP rates in a manner that reflects rate class and seasonal load characteristics and market prices.

¹ The Board will hereinafter refer to the HEP class of customers as the Commercial and Industrial Energy Pricing ("CIEP") class and customers in this category and receiving BGS service will be on BGS-CIEP. The Auction will continue to be referred to as the BGS-HEP Auction or the BGS-HEP Auction for the CIEP customer class.

The competitive process by which the EDCs propose to procure their supply for BGS load for the post-Transition Period is the same type of auction that the Board approved by Order dated December 11, 2001, which was used to procure supply for the period from August 1, 2002 through July 31, 2003. Under the Joint EDC Proposal, the retail load of each EDC is considered a separate "product" in each Auction. When a participant bids in either BGS Auction, that participant would state the number of tranches that it is willing to serve for each EDC at the prices in force at that point in the Auction. A price for an EDC is an amount in cents per kilowatt-hour ("kwh") paid for each kwh of BGS load served. A tranche of one product (i.e., a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, electric, ancillary services etc.) tranche. At the end of the Auctions, the final prices for the EDCs' tranches may be different because of differences in the products, due to each EDC's load factor, delivery location and other factors.

The EDCs propose that rates for BGS-FP customers be designed using a generic methodology implemented as described in the utility-specific addenda. Bidders would be provided with a spreadsheet that converts the Auction price into customer rates for each EDC, to enable bidders to assess migration risk at various Auction price levels. BGS-FP rates would reflect market-influenced seasonality and time of use indications, where appropriate and feasible, in order to provide efficient price signals.

The EDCs propose that payments to winning BGS-FP bidders for August and September be adjusted to reflect higher summer costs. Payments to bidders for the remainder of the bid period would be adjusted to reflect lower winter costs. The overall average payment to the bidder would depend upon BGS demand in each season and, consequently, would likely differ somewhat from the auction clearing price.

The EDCs propose that, for BGS-HEP tranches, rate schedules would be designed to include a monthly rate for the capacity obligation, a monthly rate for the transmission obligation and ancillary service costs, and a provision to pass through the hourly PJM² real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a ¢/kwh payment called the Default Supply Service Availability Charge ("DSSAC"). The DSSAC is intended to essentially act as an "option fee."

Under the EDCs' proposal, the DSSAC would be charged to all customers eligible for BGS-CIEP service and represents the value of the BGS-CIEP option. Winning bidders would be paid the auction clearing price for the option fee times the monthly sales to all BGS-CIEP eligible customers, whether on BGS-CIEP or not.

Under the Joint EDC Proposal, each BGS supplier would be required to assume PJM Load Serving Entity ("LSE") responsibility for the portion of BGS load (whether BGS-CIEP or BGS-FP) served by that supplier. In accordance with the PJM Agreements required of LSEs, BGS suppliers would be physically and/or financially responsible for the day-to-day provision of electricity to BGS customers. The detailed commercial terms and conditions under which the BGS supplier would operate, including credit requirements, are set forth in the BGS Supplier Master Agreement attached to the Joint EDC Proposal as Attachment A.

The EDCs propose that the Board render a decision on the Auction process and render a decision

² PJM is the Pennsylvania-New Jersey-Maryland Interconnection.

on the Auction results. They further propose that the Board approve or reject in their entirety the results of the BGS-FP Auction and, separately, the results of the BGS-HEP Auction, by the end of the second full calendar day after the calendar day on which the last of the two Auctions closes. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

Numerous other Auction details are explained in the Joint EDC Proposal, EDC-specific Addenda, Attachment A and Supplier Master Agreement including that:

- all customers will be free of all switching restrictions save for the Board's 20-day, anti-slamming enrollment process which the EDCs propose be extended to a 50-day process;
- BGS suppliers must meet all New Jersey Renewable Portfolio Standards ("RPS") requirements, including the reporting standards as prescribed by Board Order dated June 12, 2001, Docket No. EX99030182, in addition to all requirements of N.J.A.C. 14:4-8.1 et seq.;
- bidders do not need to obtain a BPU retail supplier license in order to participate in the BGS-HEP or BGS-FP Auction;
- as conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS Supplier Master Agreement within two days of Board certification of the results and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;
- to qualify, applicants must disclose if associations exist and if so, applicants will provide such additional information as the Auction Manager may require;
- qualified bidders are required to post a per-tranche bid bond ; and
- the Auction should be for a supply period of 10 months³.

The Joint EDC Proposal included the Supplier Master Agreement from last year's Auction. On September 12, 2002, the EDCs replaced this Agreement with a BGS Supplier Master Agreement that the EDCs proposed be used for the current BGS Auction process. In the BGS Supplier Master Agreement proposed for this Auction, the EDCs indicate that they have attempted to be more responsive to concerns that were raised by bidders last year, but were not able to be addressed at that time.

EDC-SPECIFIC ADDENDA

Each of the utility-specific addenda addresses the use of committed supply, contingency plans, accounting and cost recovery, and utility pricing and tariff sheets. In addition, they each address

³ In the alternative, PSE&G proposed that a term-averaged procurement period be considered in which one-third of each EDC's load would be secured for 10 months, one-third for 22 months and one-third for 34 months. The 10 month, 22 month and 34 month time periods are meant to synchronize the BGS procurement process with the PJM planning year, which runs from June 1 through May 31.

the issue of a retail adder. PSE&G, Conectiv and Rockland oppose any such adder. JCP&L has sponsored a 1.6 cents/kwh adder for BGS-FP customers, and indicates that it is doing so as part of a side agreement with certain TPSs which was entered into around the time of the FirstEnergy merger.

Included in JCP&L's addendum is a proposal that 300Mw of its FP load be available for a wholesale "green" procurement process. The green power would be procured through either an auction or sealed bid process. All JCP&L BGS-FP customers, including those that are part of this green proposal, would pay the same blended price, within rate classes.

Included in PSE&G's addendum is a proposal that a term-averaged procurement period be considered, in which one-third of each EDC's load would be secured for 10 months, one-third for 22 months and one-third for 34 months.

Included in Rockland's addendum is an RFP to secure a fixed price supply for its Western and Central Divisions, which are served through the New York Independent System Operator ("NYISO"). As the Western and Central Divisions are not part of PJM, they cannot participate in the regular BGS-FP Auction process.

In a separate filing, JCP&L proposed that 500Mw of its FP load be made available for licensed suppliers to serve at retail. Customers would be randomly assigned. Assigned customers would have the opportunity to opt-out and would be permitted to switch to other licensed suppliers. Customers that opt-out would be replaced by other randomly selected customers. All JCP&L customers on BGS-FP, including those served through this retail proposal, would pay the same blended price, within rate classes.

ISSUES RAISED BY OTHER PARTICIPANTS

Throughout this proceeding, there have been issues raised by the wide range of participants, which touch upon both technical and policy matters, as well as auction mechanics. While the participants agree on bringing the BGS procurement period in line with the PJM planning year, a number of different lengths for the procurement period have been proposed. While most parties agree that larger customers should be priced closer to market than smaller customers, there is a difference of opinion about where the dividing line should be drawn. There are also differing opinions about whether additional incentives are needed to produce a competitive retail market and whether such incentives are warranted. JCP&L's proposals that part of its load be served through two pilot programs were criticized by some participants for varying reasons. In addition, various participants raised issues with respect to customer switching, rate design, confidentiality and supplier contract issues. There was also a proposal that the BGS procurement process include load management alternatives. The Board will address each of these areas in its Order.

DISCUSSION AND FINDINGS

By way of introduction, there are a number of policy issues that the Board will address in this Order. In some cases, the Board will only be making decisions for a 10-month timeframe. The Board will revisit these policy issues once data from the Auction and initial switching information for Year One of the post-Transition Period (August 1, 2003 through May 31, 2004, "Year One")

starts to become available. In other cases, as specifically noted herein, the Board's decision will apply to other more extended periods.

PROCUREMENT STRUCTURE

In contrast to last year, when an auction process was a new and untried concept and its merits were challenged by some participants, all participants this year either openly support continuation of the descending clock auction process proposed by the EDCs or, by only providing comments that propose refinements to the auction process, implicitly do not object to it. Most parties also support the separation of customers into a BGS-FP Auction and a BGS-HEP Auction for larger customers.

The Board believes that the auction process which was implemented last year consistent with the Board's December 12, 2001 Order, appeared to work well and resulted in the best prices possible at the time. The Board continues to believe that, with certain refinements and enhancements as will be discussed herein, a similar auction process should be approved for the next procurement period.

The Board supports providing real-time pricing signals to customers who are prepared and able to take advantage of this type of rate design. Thus, with the modifications and enhancements described herein, the Board believes that a dual auction process as proposed by the EDCs should be adopted for the next procurement period.

PROCUREMENT PERIOD

Without exception, the comments support a 10-month period for the BGS-HEP Auction. A number of different procurement periods have been proposed for the BGS-FP Auction. Some participants, including Staff and the RPA, have proposed a 10-month period followed by a second Auction for the subsequent 12-month period. J. Aron proposed a 34-month procurement period. The EDCs, while initially proposing a 10-month period, in their Reply Comments support a term-averaged procurement process in which equal portions of an EDC's load is procured through the Auction process for either a two or three year term. The one common factor in all proposals is that the procurement periods conclude on May 31, in order to bring the procurement process in line with PJM scheduling timeframes.

Staff proposed a 10-month procurement period for BGS-FP because of the uncertainty inherent in a longer procurement period, and because the electric market is not as established and transparent as its natural gas counterpart, and also because there are certain policy decisions before the Board which, if not decided at this time, could add uncertainty to the process and therefore potentially increase the end prices for longer term supply. (Staff Comments at 2).

The proponents of a term-averaged procurement process cite the economic benefits of spreading the risk of weather, market conditions, economic activity and political uncertainty over staggered periods of time. They also assert that having a two or three year product may be more attractive to some bidders and could potentially increase the competitiveness of the process. (IEPNJ Reply Comments at 2-3). Duke asserts that a term-averaged approach would help avoid "rate shock" and would provide bidders with longer-term supply opportunities and with lower administrative costs. (Duke Reply Comments at 11). Other considerations in

determining whether to adopt a fixed or multi-year procurement period include the transparency of the electric market and the effect of the proposals on retail competition. The Board believes that a term-averaged approach has merit as it would hedge the risk of unfavorable market conditions that might be present at any one point in time. Economic and political uncertainties are part of normal business risk, which arguably would mitigate for, rather than against, a multi-year hedged approach. The Board recognizes that if it approves a multi-year process, it should strive to provide as much certainty as possible for each year of that process. The Board believes that, to a large extent, it can provide guidance on a number of key issues for a 34-month period in order to minimize bidder uncertainty.

The Board believes that the J. Aron proposal for a 34-month procurement period for the entire supply would place undue risk on customers, with limited offsetting benefits. Given the lack of extensive empirical experience with longer term procurements in the marketplace, a 34-month procurement period for 100% of the BGS-FP load is not acceptable to the Board at this time.

Therefore, in an effort to balance the risks to ratepayers, the Board will approve a term-averaged procurement process in which two-thirds of the EDCs' BGS-FP load is auctioned for a 10-month period and one-third for a 34-month period. The tranche-weighted average of the winning bids from both the 10 and 34-month periods will be used to determine the price for BGS-FP rate design for Year One. The Board will review its decision and the results of the procurement process prior to the procurement for Year Two (June 1, 2004 through May 31, 2005) to determine how best to proceed at that time with future procurements.

CUSTOMER SWITCHING

The Board currently has a 20-day enrollment process for customer switching. In addition, the Board's December 12, 2001 Order imposed a restriction on non-residential customer switching from August 1, 2002 through July 31, 2003, in order to reduce risks to BGS bidders during that supply period. It was the Board's intention at the time that this issue would be reviewed again in this present proceeding. The EDCs have proposed to remove that restriction on non-residential customers and, in their Reply Comments, recommend that the Board maintain its current 20-day enrollment process. The Joint EDC Proposal on customer switching would also remove any seasonal switching restrictions in individual EDC tariffs. A number of other parties support this proposal. The Board believes that unrestricted switching (except for the 20-day enrollment process), although it may impute some additional risk to winning bidders, is consistent with the goals of EDECA.

BGS-FP AUCTION

Rate Design

Beginning with the post-Transition Period, the prices resulting from the procurement process approved by the Board will be reflected fully and directly in customer rates. Since the filing of the initial proposals to accomplish this inclusion of bid prices into rates, Staff has taken issue with some aspects of the EDCs' proposed rate design. Staff has discussed the disputed rate design issues with the EDCs and addressed specific issues in its Comments and Reply Comments. In their Reply Comments, the EDCs have proposed to modify certain aspects of their rate design

proposal. In order to resolve disputed rate design issues, the EDCs have proposed to change the rate design methodologies filed with each EDC's individual Company-specific Addendum to:

1. modify the methodology to convert the forwards market prices into the on and off peak periods of each EDC's specific on and off peak tariff periods; and
2. shift a much larger proportion of the capacity obligation costs into the summer period rates.

The EDCs have not agreed to Staff's proposal to lower BGS-FP prices for the first block of the EDCs' residential rates and to raise prices for the second block. Staff has argued that its proposal would provide consumers with appropriate energy conservation signals, and that the EDCs' rate design proposal would likely lead to increased summer load growth, contribute to higher BGS bid prices and generally higher market energy prices for all customers.

The EDCs argue that this aspect of Staff's rate design proposal: 1) would distort market pricing contrary to the intent of EDECA; 2) makes the "price to compare" confusing to larger use customers since it will change on each bill depending on the level of usage; 3) discriminates against smaller use customers whose "price to compare" will be artificially below market; and 4) subverts the "conservation signal" intent for the majority of customers whose usage falls entirely in the first residential block.

A further rate design issue raised by Staff concerns the reasonableness of the assumed \$30/Mw/day average market capacity cost used in the BGS-FP rate design, which Staff asserts is unsubstantiated, as it is based solely upon undocumented quotes purportedly sought by the EDCs from capacity brokers.

The Board disagrees with the EDCs' arguments on rate design. First, except for customers on hourly pricing, electric rate design is by definition not actual market pricing but, rather, a regulatory determination made for legitimate, reasonable and generally accepted reasons. EDECA only requires that pricing be "based" on market prices. N.J.S.A. 48:3-57(d). As for the EDCs' other arguments, the Board recognizes that rate design is not a precise science. While the EDCs oppose the concept of inverted rate blocks for residential customers, the Board views such a model as an important regulatory tool. Inverted rate blocks send a conservation message to larger volume residential consumers; namely, that not every kilowatt-hour costs the same to produce and that reducing consumption will save you money. While this rate design is not perfect, the Board finds the Staff proposal to be preferable to the EDC proposal, at this time.

As for the \$30/Mw/day capacity cost, the Board has been advised that Staff and the EDCs have agreed that \$20/Mw/day is a more reasonable estimate for the purposes of this proceeding. The Board accepts this compromise position and emphasizes that this is simply a negotiated value for purposes of rate design and only for use in this proceeding, with no precedential value for future proceedings.

BGS-FP Retail Margin

A number of parties have proposed that a retail adder, which the Board will hereinafter refer to as the Retail Margin, be included in the price that BGS-FP customers pay. Only those customers taking BGS service would pay the Retail Margin. Some parties argue that it is necessary for BGS service to reflect the cost of providing electric service at retail, including marketing costs, risk and portfolio management costs, working capital, administrative expenses and profit margin. JCP&L has proposed a Retail Margin of 1.6 cents per kwh for all utility BGS-FP customers. (JCP&L Company Specific Addendum at 1). Staff has proposed a Retail Margin of 5 mils per kwh for all BGS-FP customers. (Staff Reply Comments at 3). The RPA opposes the imposition of a Retail Margin on BGS-FP customers, arguing that such a charge could be counter-productive. The RPA asserts that most smaller customers are not yet ready for retail competition and, therefore, a Retail Margin would increase costs to these customers without spurring retail competition. (RPA Reply Comments at 3).

While an active competitive retail market has been slow to develop, the Board believes that it needs to move cautiously in this area, especially when it concerns smaller customers. As noted above, the BGS-FP Auction being approved by this Order will result in bids that translate directly into customer rates beginning August 1, 2003. In addition, for non-residential FP customers, switching restrictions, which the Board found to be necessary for the last auction period, will be eliminated along with seasonal switching restrictions peculiar to each EDC. These changes should help make the retail market for FP customers more attractive to licensed suppliers. It is not clear whether these changes, by themselves, will be enough to either encourage customers to shop or to encourage electric suppliers to market. It is likely that, initially, more of this activity will occur for larger FP customers than for residential and small commercial customers. If the Board were to impose a Retail Margin on all FP customers and the amount of competitive activity in Year One was still minimal or limited to larger FP customers, the Retail Margin would just increase the cost of electricity to most of the customers in the State with minimal resulting benefits. In the alternative, if a Retail Margin were imposed on FP customers and switching activity increased above some minimum level, the Board would not be sure how much of this activity was a result of the Retail Margin and how much was a result of market-based rates and unrestricted switching. Accordingly, the Board does not believe it appropriate to approve a Retail Margin on FP customers for Year One.

Looking ahead to post-Transition Period Years Two and Three, the Board believes that larger FP customers should be encouraged to shop for retail electric suppliers. As discussed below, the Board will consider expansion of the hourly pricing customer class though inclusion of additional customers from the current FP category. If larger FP customers are transferred to hourly pricing for Years Two and Three, the Retail Margin in effect for hourly pricing customers, as discussed below, would also apply to these customers. If, for whatever reason, the Board does not find it appropriate to transfer these customers to hourly pricing in Years Two and Three, the Board believes that the imposition of a Retail Margin on those customers with a load above 750Kw would be appropriate at that time, as these customers will likely be the first group targeted by marketers after the hourly pricing customers. Over the next 16 months, through the CIEP Education Task Force described below, it is anticipated that these customers will become more familiar with the changes occurring in the electric marketplace in New Jersey and the options available to them. The Board intends to gradually expand the number of customers on hourly pricing and believes that these larger customers should be given appropriate price

signals to encourage the development of retail competition. For these reasons, the Board FINDS that for Years Two and Three, a Retail Margin of 5 mils per kwh is appropriate and should be included in the rates of BGS-FP customers with an annual generation capacity obligation ("annual load") equal to or greater than 750Kw.

At this time, the Board is not comfortable with imposing a Retail Margin on customers with an annual load of less than 750 Kw. However, the Board will reconsider this issue prior to Year Two. In order to provide BGS-FP bidders with some degree of certainty on this issue, the Board is prepared to state at this time that, in the event that a Retail Margin is imposed on some or all BGS-FP customers with an annual load less than 750Kw in Years Two or Three, the Retail Margin imposed will not be greater than 5 mils per kwh.

In considering the issue of a Retail Margin for BGS-FP customers, the Board looked at whether it might be appropriate to differentiate, within the BGS-FP class, between residential, small commercial and industrial customers and larger BGS-FP customers. The RPA has also suggested that the Board make a distinction between smaller and larger C&I customers within the BGS-FP category. (RPA Reply Comments at 1). One of the difficulties with making this type of decision is that there is no consistent definition of what constitutes a "small commercial and industrial customer" among the various EDCs. This issue has come up before in a number of different contexts. Since, in terms of consumption and demand, a small commercial or industrial customer may be substantially similar to a residential customer, the Board finds that this lack of a generic definition restricts the Board's decision-making flexibility. Therefore, the Board DIRECTS the EDCs to propose, by December 31, 2002, a generic definition of small commercial and industrial customers for rate-making purposes. In this same proposal, the EDCs should comment on any problems they see with the creation of uniform EDC rate classes for all customer classes. The Board thereafter will determine whether the proposed definition of small commercial and industrial customer is acceptable and whether it should be used in the current and future EDC rate proceedings. The Board also will determine whether further uniformity among EDC rate classes is appropriate.

BGS-HEP AUCTION

HEP Bid Product and DSSAC

The EDCs, in their Reply Comments, modified their proposal to accommodate concerns that if the capacity charge is set too low to cover the cost or risks of agreeing to provide BGS-CIEP at a fixed capacity rate, the DSSAC, which, as originally proposed, would be paid by all customers, may be excessively high and could inefficiently discourage shopping. The EDCs now propose that the DSSAC be set at three one-hundredths of a cent per kwh. The EDCs argue that the DSSAC is a necessary component to make BGS-CIEP an attractive product to bidders, who will be bidding for the right to wait to serve BGS-CIEP-eligible customers who may never take BGS-CIEP service. Staff agrees with the concept of having capacity as the bid product and the DSSAC charged to all CIEP customers, but proposed a fixed DSSAC of one one-hundredth of a cent per kwh. (Staff Reply Comments at 3). NJLEUC, MAPSA, and Reliant argue that the DSSAC is not necessary or should only apply to BGS-CIEP customers and not to CIEP customers that have switched to TPSs.

The Board agrees with the change to capacity as the bid product. The Board also agrees that the DSSAC provides winning bidders with a steady revenue stream for the service provided and gives all BGS-CIEP customers the option to switch with assurance that there will be a ready provider for the customer to fall back on. Therefore, the Board FINDS that CIEP customers as a whole benefit from the availability of this option and all CIEP customers should pay the DSSAC.

The level of the DSSAC is somewhat subjective, given the lack of actual experience in this area. Staff suggests that a DSSAC of one one-hundredth of a cent per kwh would produce approximately \$1.5 million annually, which should be sufficient for providing this service. On a 10-month basis, which is the term of the initial BGS-HEP supply period, the DSSAC would produce approximately \$1.2 million if Staff's proposal were accepted. Having reviewed the position of the parties on this issue, the Board will set the DSSAC for Year One, for all CIEP customers at fifteen one-thousandths of a cent (\$.00015) per kwh, which should produce revenues of approximately \$1.8 million, which should be adequate to attract bidder interest in providing this service. The Board believes that structuring the BGS-HEP Auction to attract more bidders should result in lower bids for capacity, which, in turn, would potentially benefit all BGS-CIEP customers and offset the relatively minor DSSAC.

BGS-CIEP Retail Margin

As described above under the section BGS-FP Retail Margin, the Board recognizes that there are additional costs involved in providing retail service compared to default service. For the reasons explained in that discussion, and for the same reasons that the Board will impose a Retail Margin on customers with an annual load equal to or greater than 750Kw starting in Year Two, the Board similarly FINDS that a 5 mil per kwh Retail Margin is appropriate for BGS-CIEP customers beginning with Year One.

At this time it is not possible to estimate the level of revenues that will be collected from customers in the form of a Retail Margin. Although the revenues could conceivably approach \$60 million for Year One if all CIEP customers stay with BGS service, it is unlikely that this will be the case. However, there is no way of reasonably estimating the number of customers that might switch to TPSs given the number of new factors being introduced to these customers, including hourly pricing, unrestricted switching and a Retail Margin. The Board strongly believes that the revenues which the EDCs receive from the Retail Margin are customer supplied funds that must be returned to customers. This could be done in a number of ways, including as an offset to deferred balances, which were authorized pursuant to and incurred subsequent to the enactment of EDECA in 1999.⁴ The Board will make a determination as to how these funds should be returned to customers at a future date. Therefore, the Board DIRECTS that the EDCs maintain the revenues collected from the BGS-CIEP Retail Margin in a deferred account with interest, until the Board makes a determination as to how the BGS-CIEP Retail Margin should be returned to customers.

Expansion of the CIEP Class

A number of parties have suggested that the CIEP category be expanded to include additional large commercial and industrial customers. Reliant comments that if the CIEP class is limited in

⁴ Among other things, EDECA allowed the EDCs to defer certain costs during the Transition Period, and provided for future recovery from customers.

size, licensed suppliers may choose not to participate in the retail market. They suggest that a structured expansion of this class is acceptable, but if a working group is created to address the expansion of the CIEP class it should be open to TPSs. (Reliant Reply Comments at 1-2). NJLEU agrees that the CIEP class must be sufficiently broad to provide a strong foundation for competition. (NJLEU Reply Comments at 6). Duke asserts that implementing hourly pricing for all customers with a peak load above 1 Mw per month would alleviate the risk associated with C&I customer switching. (Duke Reply Comments at 7). Staff proposed that, at a minimum, Rockland create a CIEP class for its largest customers. (Staff Reply Comments at 3).

In response to the proposals for expansion of the CIEP class, the EDCs have presented a proposal to identify appropriate customers and include those customers in the CIEP class for Year Three. They argue that load profile data must be gathered to redefine the CIEP and FP class of customers, and that without such data there would be increased bidder uncertainty for both customer class groupings, with a resulting increase in bidder risk and prices for BGS customers. The EDCs maintain that the CIEP class should not be expanded without empirical evidence derived during Year One to determine whether these generally "smaller" customers are going to have viable shopping alternatives. They also suggest that the Board complete the consideration of future metering options that was initiated by its July 22, 2002 Order before undertaking expansion of the use of advanced metering beyond the rate classes currently proposed to be included under CIEP. (EDC Joint Reply Comments at 21-23).

The Board believes that the number of FP customers with an annual load above 750Kw is about 650 statewide. While the Board has some idea of the types of businesses included in this group of 650, it is not sure of their individual ability to respond to hourly pricing. Below the 750Kw annual load level the Board has little information of any kind that would be useful in determining this issue. The Board is concerned that expansion of the CIEP class at this time is premature and could result in the inclusion of customers who would be unable to adapt their operations so as to shift load and readily adapt to hourly pricing, thus leaving these customers without viable alternatives in the competitive market. The Board does not have adequate information on the largest FP customers that would be the next logical candidates for inclusion in the CIEP category to make such a decision at this time. The Board also recognizes that reasonable load profile information for auction participants has the potential to benefit all consumers. For these reasons, even though the Board supports the concept of hourly pricing for larger customers, it is reluctant to move too rapidly. As the EDCs indicated, the Board recently initiated a review of EDC metering practices to be conducted by Staff in conjunction with the RPA. This would be an appropriate forum in which to further explore this issue. Accordingly, the Board DIRECTS that this review process be expanded to a Metering Working Group ("Working Group") to consider how and when the CIEP class should be expanded and whether inclusion in the CIEP category should be voluntary or mandatory. Furthermore, the review process initiated earlier by the Board was limited to Staff and the RPA, as it was anticipated to have a limited scope and was basically intended to provide reference material for the Board. With an expanded scope, the Working Group just ordered should be open to all interested participants.

Because the remainder of BGS supply for Years Two and Three will likely continue to be procured through a competitive process, the Board will need accurate load profile information in a timely manner. The Board will therefore need to decide on the size of the CIEP class, at least for Year Two, in the near future. In order to do so, the Metering Working Group needs to begin consideration of the issues early in 2003. In order that this Working Group has adequate

information to begin the process with meaningful discussions, the Board DIRECTS the EDCs to provide to the Board and interested stakeholders, by no later than December 31, 2002, information regarding the EDC's FP rate class containing, in general, the largest commercial and industrial customers that are not included in the BGS-HEP Auction for the current year. These classes are: for ACE-AGS Primary; for JCP&L-GST; for PSEG-LPL Secondary; and for Rockland-SC-2 Primary and SC-7.

This information should fully describe the customers in each such rate class by number of customers, by usage level increments set forth in 100kw monthly peak demand (e.g. number of customers 100-199kw, 200-299kw etc.), number of advanced meters (interval, time of use, pulse) currently installed, and any other relevant identifying factors that would assist the Working Group in achieving its goals.

Based on the information to be provided to the Board by the EDCs, the Board DIRECTS the Metering Working Group created by this Order, to develop, by no later than April 30, 2003, recommendations and an implementation plan for the transition of the customers in these rate classes to the CIEP class. The plan shall ensure that all customers in these rate classes will be provided with necessary interval metering capabilities and that the EDCs shall implement any data management improvements necessary to enable these customers to be transitioned to the CIEP class by no later than May 31, 2004, whether or not the Board decides to do so in that timeframe. Costs associated with interval meter installation required by this Order, including capital, operation and maintenance costs and the cost of billing system enhancements, should be determined in the context of the current rate proceedings for JCP&L, PSE&G and Rockland and in the upcoming rate proceeding for Conectiv. Those costs, whether or not incurred during the relevant test year, should be reflected, on a pro forma basis if necessary, in the revenue requirements on which rates will be set in those proceedings.

While Rockland has not proposed to create a CIEP category at this time, even though it has 18 customers that are appropriate for this category, the Board sees no reason why Rockland's largest customers should be treated differently than other similarly situated customers in other EDCs' territories. Therefore, the Board DIRECTS Rockland to create a CIEP category and to include these 18 customers in that category for Year One, to participate in the BGS-HEP Auction and to participate in the Metering Working Group. Since Rockland's resulting aggregate CIEP load may be less than the 50Mw currently proposed as a tranche size in the BGS-HEP Auction, the appropriate adjustment should be made in the compliance filing which will be required later in this Order.

EDC-SPECIFIC PROPOSALS

Rockland RFP

Rockland has proposed to issue an RFP to secure a fixed price for its supply needs for approximately 40Mw of load in its non-PJM areas. The bids would be opened the day after the BGS-FP Auction closes and the successful bid(s) presented to the Board for approval. If approved, the Rockland RFP price would be averaged with the Rockland BGS-FP price to determine customer rates. While the Board agrees with the RFP process proposed by Rockland to secure electricity for its non-PJM load, it also agrees with Staff's recommendation that the Rockland RFP process be completed prior to the BGS-FP Auction. The Board believes this is

necessary to prevent the possibility that exists under Rockland's proposed timeline, that bidders in the Rockland RFP process who also bid in the BGS-FP Auction might have information, which would provide them with an advantage over other RFP bidders who did not also participate in the BGS-FP Auction. Therefore, the Board DIRECTS Rockland to work with Staff to revise its RFP process and timeline for non-PJM load, consistent with this Order.

JCP&L - Retail Pilot

JCP&L proposed a Retail Pilot Program ("Retail Pilot") that would make 500Mw of its BGS-FP load available for licensed suppliers to serve at retail. Customers would be randomly assigned and all customers on BGS-FP, including those served through this Retail Pilot would pay the same price, within rate classes. Staff is opposed to this program as providing little benefit to customers or the Board. The RPA is also opposed to the Retail Pilot because it proposes both customer assignment and averaging of bids to come up with a uniform BGS-FP rate. (RPA Reply Comments at 2). The Board would be willing to consider a pilot program if such a program were to advance customer awareness of a changing marketplace, provide the Board with some indication of customer preferences, attempt new methods to transition to a competitive market, and/or attempt to advance other Board policies. The JCP&L Retail Pilot as filed does none of these. While the Board could modify the proposal to include voluntary customer enrollment, this would probably be meaningless, since to the customer, the product proposed by JCP&L is indistinguishable from BGS-FP service. At this time, the Board sees no meaningful benefit to consumers or to the market in approving this proposal. Therefore, the Board DENIES JCP&L's petition for a Retail Pilot program.

JCP&L - Green Pilot Proposal

Included in JCP&L's addendum is a proposal that 300Mw of its BGS-FP load be procured via a wholesale green auction, similar to the BGS-FP Auction. Staff has proposed several modifications to the JCP&L proposal, including reducing the size to 200Mw and changing the program from wholesale to retail. Staff also endorsed the sealed bid format that JCP&L had identified as an option. (Staff Comments at 5-6).

Although the JCP&L Green Pilot proposal would likely foster demand for renewable energy in New Jersey, the Board would prefer a pilot program that more closely replicates market conditions and that has the potential to improve the competitive marketplace. Staff's proposed modifications move the Green Pilot in these directions, but in the Board's view do not go far enough.

The Board believes that voluntary customer choice would advance customer awareness of renewable energy and the changing retail electric marketplace. Similarly, by focusing on residential customers, there is a better chance that customers enrolled may choose to stay with "green" providers after the program's conclusion and therefore the Green Pilot program could lead to a permanent change in some customer's behavior. Both of these modifications are possible. The Board would like to help jump start the green marketplace in New Jersey and to see customer choice based on clear pricing signals, which this proposal, even after Staff's proposed modifications, does not have. However, the majority of the Board believes that with the above-described modifications, the Green Pilot program can potentially provide meaningful benefits, including improved air quality, to consumers and to the market.

Therefore, with the foregoing modifications and for the foregoing reasons, the Board DIRECTS JCP&L to implement a Green Pilot program for Year One⁵. The Green Pilot will be for 200Mw of residential load or 150,000 customers, whichever is greater, supplied through a sealed bid process for licensed electric power suppliers. The Board will have the opportunity to review the final winning bids and accept or reject them in whole or in part. JCP&L customers will be informed of their ability to opt-in to the Pilot and of the nature of the green power to be supplied (see below). To the extent 200Mw of load is only partially enrolled on a voluntary basis, JCP&L shall provide for random customer assignment to provide sufficient residential load for a 200Mw RFP. Bidders in the pilot program will be required to have, or be capable of obtaining by June 1, 2003, an electric power supplier license. Since the modifications made herein to the JCP&L Green Pilot requires JCP&L to significantly adjust the processes and the documents related thereto, the Board DIRECTS JCP&L to work with Staff to develop a Green Pilot RFP and other related and necessary documents, based upon the above requirements, so that a Green Pilot RFP can be issued consistent with the timeframe identified in Attachment A.

OTHER ISSUES

Retail Green Marketing Program

In addition to the Green Pilot proposal, Staff proposed that the Board encourage renewable energy by providing green retailers throughout the State with a margin of 5 mils for each kilowatt-hour of green power supplied. As initially proposed by Staff, the 5 mils would have come from the collection of a 5 mil Retail Margin, which Staff had proposed be levied on BGS-FP customers. Under Staff's proposal, green retailers would effectively receive a 10 mil differential between itself and the effective BGS-FP rate as a marketing incentive. (Staff Reply Comments at 4).

For the reasons explained above, the Board has determined that it is not appropriate to assess a Retail Margin on BGS-FP customers for Year One. This makes much of the Staff proposal unworkable, at least for Year One. However, as indicated above, the Board is interested in promoting renewable energy and is particularly interested in doing so through customer choice rather than customer assignment. The Board recognizes that various forms of green energy typically cost more than other forms of retail power. The Board believes that a 5 mil per kwh incentive, while less than the 10 mil differential to BGS-FP service proposed by Staff, would help develop the fledgling green retail market in New Jersey. It would also do so through a process that has customers affirmatively choosing green power based on price, albeit with some price support, and other factors in a true retail setting. The Board believes that such a program should be available on a statewide basis.

As noted above, there is no BGS-FP Retail Margin for Year One to use as a possible funding source for the Staff proposal, and even though the Board has approved a Retail Margin for the BGS-CIEP class for Year One, it has decided to delay determination on the use of those funds to a later date. Therefore, the Board cannot approve the Staff's Retail Green Marketing Program proposal for Year One. However, since the Board supports the concept and is comfortable that it will be able to identify a source of price support for this program in the future, the majority of the Board will approve Staff's Retail Green Marketing Program for implementation as a pilot

⁵ The Board approved the JCP&L Green Pilot Program by a vote of 4 to 1, with Commissioner Connie O. Hughes dissenting. See Dissenting Opinion at the end of this Order.

program in Year Two⁶. Since this will be a pilot program, the Board will limit the number of customers that can be enrolled in this program to 200,000 residential customers statewide.

For the foregoing reasons, the Board DIRECTS each EDC to implement a Retail Green Marketing Program described above for Year Two and to work with Staff to develop the necessary parameters and procedures for this program in a timely manner. The Board will review and approve the necessary parameters and procedures prior to Year Two. At a later date, the Board will review the Green Retail Marketing Program and determine its applicability to Year Three.

Definition of "Green"

Staff further proposed that, for the purposes of the JCP&L Green Pilot Program and the Retail Green Marketing Program, "green power" be defined as three times the current Renewable Portfolio Standard's requirements for class I and class II renewables. For 2003, this requirement is currently for all electric power delivered at retail to include .75% Class I plus 2.5% for Class I or II renewables. In its green proposal, JCP&L had proposed that "green" mean that 15% of the electricity delivered would come from either class I or class II renewables. The Board supports the Staff proposal, since it provides a proportion of class I and class II renewables more consistent with that established by the Legislature in EDECA. Furthermore, in order to provide some certainty to bidders in the JCP&L Green Pilot, the Board will define "green power" in that program only, as three times the RPS requirements in effect on the date of this Order, for the RFP supply time period. For the Retail Green Marketing Program, "green power" will be defined as three times the RPS requirements in effect at the time electricity is delivered.

BGS Supplier Master Agreement

At this time, there appear to be outstanding issues involving the BGS Supplier Master Agreement ("Agreement") as proposed by the EDCs. The Board believes that with some additional discussion among the participants and with the direct involvement of Staff in these discussions, some, if not all, of these issues could be resolved. The Board believes that the Tentative Approvals and Process Schedule, in Attachment A to this Order, incorporates enough flexibility to allow the parties an additional two weeks to continue to attempt to resolve these outstanding Agreement issues. Therefore, the Board DIRECTS Staff to meet with the parties, attempt to resolve outstanding Agreement issues, and report back to the Board with recommendations on the Agreement at its November 20, 2002 agenda meeting.⁷

Consumer Education

Since hourly pricing for CIEP customers is a significant rate design change, the Board is determined that the customers in this category for Year One, and those that may be included in an expanded CIEP class in Year Two and beyond have a thorough understanding of how their electric consumption will be priced and their options for reducing their electric bills. Therefore, the Board ORDERS the creation of a CIEP Education Task Force, open to representatives of all interested parties, to work in conjunction with the Board's existing customer education program,

⁶ The Board approved the Retail Green Marketing Program by a vote of 4 to 1, with Commissioner Carol J. Murphy dissenting. See Dissenting Opinion at the end of this Order.

⁷ This matter was, in fact, considered and addressed by the Board at its November 20, 2002 Agenda meeting.

to develop recommendations for the Board on educating CIEP customers on hourly pricing, the mechanics thereof and their possible alternatives. The Board DIRECTS Staff to schedule a procedural conference with all interested parties as soon as practicable in order to establish procedures and a timeframe for the Task Force to develop its recommendations for final Board approval.

As a practical matter, the EDCs need to begin almost immediately to communicate with those customers on CIEP for Year One about the change to hourly pricing, the mechanics thereof and their possible alternatives. Since it is conceivable that the CIEP Education Task Force may not have formulated comprehensive recommendations in time to properly inform CIEP customers for Year One, the Board DIRECTS the EDCs to work with Staff to begin this education process until such time as CIEP Education Task Force recommendations are available and approved by the Board.

Confidentiality

The integrity of the Auction process depends on a fair set of rules that promotes dissemination of information in a non-discriminatory manner and results in no bidder or bidders having an advantage over any other. From the Board's experience with the BGS auction conducted in February 2002, it may be the case that certain information pertaining to the Auction design methodologies, including the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. It, therefore, appears that this competitive information may need to be protected, not only as a matter of fairness to potential bidders but also to ensure that these and any future BGS Auctions are competitive.

The Board DIRECTS its Secretary to prepare a letter describing in further detail the information for which the Board is considering issuing a Protective Order. The Board will permit interested parties to provide comments until Wednesday, November 13, 2002 with reply comments due on Monday, November 18, 2002. The Board will then make a final determination on the status of this information at its next public agenda meeting thereafter.⁸

Auction Promotion/Development

The Board concludes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock auction, provided that the rules and details are specified and implemented correctly, and provided that the auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. In anticipation of Board approval of an auction process, the EDCs have attempted to facilitate the process and increase the number of prospective bidders by educating potential bidders about the proposed Auctions. Among the steps that have and will be undertaken by the EDCs are:

⁸ The Board, in fact considered and ruled on this issue at its November 20, 2002 Agenda meeting.

- Bidder Information Sessions in Philadelphia and Washington, D.C.;
- An Auction web site at www.bgs-auction.com which publicizes new developments, allows interested parties to download documents related to the auction, has FAQs (Frequently Asked Questions with answers) so all bidders are similarly informed; and has links to PJM and other useful sites;
- A virtual data room for potential bidders with data relevant to the bid and answers to questions posed by bidders about the data in the virtual data room;
- Bidder information packets including the background information and information about the auction process;
- Press releases to newspapers and trade publications;
- Direct e-mails to interested parties to inform them of any new developments or any new documents posted to the website; and
- Comments solicited on the draft Auction Rules, the draft BGS Supplier Master Agreements and the draft credit instruments.

The Board believes that the foregoing marketing effort by the EDCs and the Auction Manager will increase the chances that a successful BGS procurement can be achieved.

BOARD APPROVAL PROCESS

As with last year's auction, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock auction process, as described above, provided that the rules and details are specified and implemented correctly. Therefore, barring some national or industry emergency, the timing of the auction process being approved with this Order, including certification of the auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, Tentative Approvals and Process, there are a number of decisions/actions that would need to be made after Board approval of the auction process. Each of these decisions/actions needs to take place according to such a schedule in order that the bidders are prepared and comfortable with participating and the Auctions result in competitive market-based BGS prices. Attachment A is labelled "Tentative" to indicate that the Auction Manager, in consultation with Staff, has discretion to make minor adjustments to these dates in order to provide for an orderly implementation process, not to indicate that the Board anticipates any significant changes to this schedule.

Based on the Board's experience with last year's auction, an overriding fundamental premise of the approval process is that uncertainty or delay concerning the period between the submission of bids and the approval of the bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auction results. Because of the volatility of the electric markets, bids cannot remain valid for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results the additional risk to bidders will show itself through higher prices. Therefore, the Board will commit to addressing the results of the BGS-FP Auction and the BGS-HEP Auction each in its

entirety and certify the results of each for all of the EDCs or for none of them no later than the second day after the last Auction closes.

Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, the Board will consider the results of the BGS-FP Auction in its entirety and consider the results of the BGS-HEP Auction in its entirety and certify the results of each Auction for all of the EDCs or for none of them.

Another decision that requires full Board approval is acceptance of the EDCs' Compliance Filing. Because of the significance of this proceeding the Board DIRECTS the EDCs to make a Compliance Filing by November 15, 2002. The Board will consider approval of the Compliance Filing at its next scheduled Board meeting thereafter.⁹

Either the EDCs or the Auction Manager, in consultation with Staff and CRA, may make other Auction decisions, identified in Attachment A. These decisions include determination of Contingency Plan levels, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, specific bidder application and credit issues, load cap and volume adjustment decisions, Auction price decrements and other unknown lesser decisions, which might be required throughout the implementation process. Some of the aforementioned areas, such as bidder application and credit issues, are subject to rules spelled out in the Joint EDC Proposal. Other areas, such as load caps and volume adjustment decisions, determination of Contingency Plan levels, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, and auction price decrements are either utility-specific concerns, are determined directly from algorithms included in and approved as part of the Joint EDC Proposal, or are areas that need to be addressed by the Auction Manager based on its experience in this field. Should any unforeseen circumstances occur during the Auction decision-making process, Staff will immediately bring the matter to the Board's attention.

For the final certification of the Auctions' results, the Board will schedule a special agenda meeting for the first day of the Auctions, as a forum to consider unforeseen circumstance, should any develop. When the Auctions are complete, the Board will review and consider the results. The Auction Manager will provide a Final Report to the Board and to the RPA on the results of the Auctions and how the Auctions were conducted, including the post-Auction evaluation forms in Attachment B, prior to Board certification of the results. CRA shall provide a Pre-certification Report to the Board, including completed post-Auction evaluation forms in Attachment B, prior to Board certification of the results.

In addition to the Auction certifications, the Board will also certify the results of the JCP&L Green Pilot RFP and the Rockland RFP within two calendar days of those bids having been submitted to the Board for its consideration. The Board will review and consider the RFP results including information provided by JCP&L, Rockland and Board Staff on the results of the RFP process, including the post-Auction evaluation form in Attachment B, prior to Board certification of the

⁹ The Board considered and approved the Compliance Filing at its November 20, 2002 Agenda meeting

results. In the case of the JCP&L RFP and the Rockland RFP, the Board may approve the entire set of winning bids, just those lowest bids that the Board finds reasonable, or none of them. If some or all of the winning bids from the JCP&L Green Pilot are not acceptable to the Board, that portion of the 200MW of load proposed for this pilot program not secured through the RFP process will then be included as a part of JCP&L's load requirement in its BGS-FP Auction.

Finally, the Board is aware that the dispute between the EDCs and the Geophonics, Inc. regarding an alleged patent infringement remains unresolved. Nothing herein is in any way intended to relieve the EDCs and/or the Auction Manager of their responsibilities to conduct the Auction in a lawful matter, including obtaining any appropriate licenses that may be required by law.

FINDINGS AND CONCLUSIONS

Based on the foregoing and after carefully reviewing the record in this proceeding, the Board FINDS that:

This has been an open proceeding, with all parties desiring to present written or oral comments on the record having been afforded the opportunity to do so;

The Joint EDC Proposal, as modified herein, is consistent with EDECA and the EDCs' Final Restructuring Orders;

The Joint EDC Proposal, as modified herein, can be implemented in a timely fashion so as to provide BGS service for the post-Transition Period;

The Joint EDC Proposal, as modified herein, continues the smooth and orderly transition of the State's electric industry from a regulated monopoly to a competitive power marketplace begun with the Board's December 11, 2001 Order;

The Joint EDC Proposal, as modified herein, will diversify the supply for BGS service by seeking multiple competitive suppliers to serve "tranches" of BGS load;

The EDCs' proposal to obtain any supply not secured in the Auctions through PJM-administered markets will ensure the maximum participation in the auction process;

It is necessary and in the public interest for the electric public utilities to provide BGS-FP service, as approved herein, in Years One, Two and Three of the post-Transition Period;

The Joint EDC Proposal, as modified herein, is the best means to secure electricity for Year One, as well as a portion of the electricity required for Years Two and Three of the post-Transition Period;

An Auction process for two-thirds of the EDCs' BGS-FP load for 10 months and for one-third of such load for 34 months balances risks and provides a reasonable possibility for price stability under current conditions;

The BGS-FP and BGS-HEP Auction rules provide for financial guarantees from winning bidders that will protect ratepayers from a bidder default;

Switching restrictions for BGS-FP and BGS-CIEP customers are not necessary for Years One, Two or Three;

The EDCs' BGS-FP rate design, as modified herein, is an appropriate methodology to translate final BGS-FP bids into customer rates;

A Retail Margin is not appropriate for BGS-FP customers for the first 10 months of the post-Transition Period;

A Retail Margin of 5 mils/kwh is appropriate for BGS-FP customers with a load of 750 Kw or greater for Years Two and Year Three of the post-Transition period;

The Board will, at a later date, determine how the Retail Margin collected should be returned to customers, including possibly as an offset to deferred balances;

The Board will make a later determination on whether a Retail Margin is appropriate for Year Two and Year Three for BGS-FP customers with a load of less than 750 Kw. However, if in the future a Retail Margin is determined to be appropriate, in no case will it exceed 5 mils for BGS-FP customers;

Capacity should be the bid product in the BGS-HEP Auction, with a fixed DSSAC charged to all eligible CIEP customers for administration and risk management;

Rockland should create a BGS-CIEP category and include its 18 largest customers in this category for Year One;

A DSSAC of .15 mils/kwh (\$.00015) is reasonable for CIEP customers to encourage competition in the BGS-HEP Auction;

A Retail Margin of 5 mils/kwh is appropriate for BGS-CIEP customers for the first 34 months of the post-Transition Period;

For each EDC, customers in the largest BGS-FP rate class of commercial and industrial customers, not currently part of the BGS-CIEP category, as constituted on the date of this Order, should have interval meters installed for Year Two;

The metering review initiated by Board Order dated July 22, 2002 should be expanded to include all interested parties and consider which BGS-FP customers, if any, in the largest BGS-FP rate class of commercial and industrial customers should be included as CIEP customers for Year Two;

Costs associated with interval meter installation required by this Order, including operation, maintenance costs and billing system enhancements, should be subject to recovery by the EDCs in a forum consistent with this Order;

The JCP&L retail pilot proposal as filed would provide limited benefit to customers or the State;

The JCP&L Green Pilot proposal, as modified herein, has the potential to provide meaningful benefits to consumers, green retail suppliers and the State;

An RFP process for the JCP&L Green Pilot proposal, as modified, should be conducted consistent with the schedule in Attachment A;

The Retail Green Marketing Program proposed by Staff, as described and modified above, will allow more consumers to become familiar with and choose green energy under actual retail conditions, will encourage renewable activity in the region, and should be implemented for Year Two;

For the Retail Green Marketing Program, "green power" will be defined as three times the RPS requirement in effect at the time electricity is delivered;

For the JCP&L Green Pilot, as modified above, "green power" will be defined as three times the RPS requirement in effect on the date of this Order, for the RFP supply time period;

The Rockland RFP proposal, as modified herein, provides a reasonable means of securing supplies for its non-PJM load;

The Rockland RFP proposal should be conducted prior to the BGS-FP Auction consistent with the schedule in Attachment A;

A working-group should be created to consider the potential for market-based approaches for delivering cost-effective load management as part of the BGS process;

A program should be developed within the existing customer education program to educate the CIEP customer class about hourly pricing;

It is appropriate that National Economics Research Associates ("NERA") act as Auction Manager for these Auctions;

The Committed Supply methodology proposed by the EDCs is the most reasonable means of dealing with the existing utility Committed Supply obligations;

Fulfillment of their Auction obligations will not cause successful bidders in the BGS Auction to be "Electric Power Suppliers" as defined in N.J.S.A. 48:3-51 and N.J.A.C. 14:4-2.2 and thus successful bidders do not need to obtain a New Jersey electric power supplier license;

Successful bidders in the JCP&L Green Pilot need to obtain a New Jersey electric power supplier license;

Certain information and processes, as identified herein, may be competitive by nature and the Board will consider whether a Protective Order should be issued for this competitive information;

The accounting and cost recovery processes identified in the utility-specific addenda to the Joint EDC Proposal are reasonable and consistent with the Board's Final Unbundling Orders;

The utility-specific Contingency Plans, adjusted where necessary to reflect the decisions in this Order, are reasonable;

The Tentative Approvals and Process schedule in Attachment A reasonably balances process efficiency with Board oversight;

A designee from the Board's Energy Division, from the Board's Office of the Chief Economist and CRA shall observe the Auctions for the Board;

The Auction Manager will provide a Final Report to the Board and to the RPA on the results of the Auctions and how the Auctions were conducted, including the post-Auction evaluation forms in Attachment B, prior to Board certification of the results;

CRA shall provide a Pre-certification Report to the Board, including a completed post-Auction evaluation form in Attachment B, prior to Board certification of the results;

The Board will consider the results of the BGS-FP Auction and the BGS-HEP Auction each in its entirety and certify the results of each for all of the EDCs or for none of them no later than the second day after the last Auction closes; and

It is appropriate for the Board to develop a statewide definition and tariff class for "small" commercial and industrial customers and to consider a more generic approach to all non-residential customer classes.

Accordingly, for the foregoing reasons, the Board APPROVES the Joint EDC Proposal, including the BGS-FP and BGS-HEP Auction Rules, the EDC-specific addenda, the Rockland RFP and the JCP&L Green Pilot Program, with the modifications described herein. The Board DIRECTS the EDCs to update the tentative decision schedule included as Attachment A, consistent with this Order. The updated schedule should include Board certification of the Auction results by the end of the second calendar day following the calendar day on which the last Auction closes and certification of the JCP&L Green Pilot RFP and the Rockland RFP by the end of the second calendar day following the calendar day on which the RFP bids are filed with the Board. The Board reserves the right, at the certification meeting, to reject the BGS-FP Auction results and/or the BGS-HEP Auction results. Furthermore, the Board reserves the right, to reject, in whole or in part, the JCP&L Green Pilot RFP results and/or the Rockland RFP results.

Furthermore, the Board DIRECTS that the Joint EDC Proposal be modified consistent with the foregoing and that the EDCs make compliance filings, including an updated Attachment A and any other changes consistent with this decision, by Friday, November 15, 2002.¹⁰ The Board FURTHER DIRECTS the EDCs to work with Staff and CRA to ensure that any supplemental documents, such as application forms and tariffs, are fair and developed consistent with this decision and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner. The JCP&L RFP should be developed with Staff and CRA and issued consistent with our foregoing directions.

DATED: 12/18/02

BOARD OF PUBLIC UTILITIES

BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

¹⁰ See footnote 9

DISSENTING OPINION OF COMMISSIONER CONNIE O. HUGHES AS TO THE JCP&L
GREEN PILOT PROGRAM

I respectfully dissent from the majority ruling regarding the Green Pilot Program proposed for implementation by JCP&L.

As discussed at the Board meeting, I am a major proponent of clean energy, renewable energy, energy efficiency and energy conservation. This pilot however is misnamed a "green" pilot. The pilot program's green component is defined "as three times the current Renewable Portfolio Standard's requirement for Class I and Class II renewables." This total reflects 9.25% - 2.25% for Class 1 plus 7.5% for Class I or II renewable energy sources. For 2003, the RPS requirement for all electric power delivered at retail is currently a total of 3.25% (0.75% Class 1 and 2.5% Class I or II) In each case; the percentage of "actual" green energy sources is a minimum component (less than 10%) of the total electric power being provided to retail consumers by JCP&L. Defining this program to the basic retail consumer as "green" is misleading without further explanation.

My dissent is based upon the fact that all JCP&L consumers – low income, senior citizens, moderate and high income – will pay more whether or not they participate in this pilot. In addition, while I support an "opt in" program I do not support the JCP&L proposal that customer would be "switched" into the green program if not enough consumers opt in, initially.

Further, no factual evidence or information was provided either in staff briefings, party comment, or at the public Board meeting, that such a pilot would begin or result in the market transformation the Board is looking for, i.e., consumers having choice in relationship to "cleaner/greener" energy must be based on full information, including how (what proportions) of the pilot program will be cleaner/greener versus the other program options; what are the incentive(s) being used for the consumers choice to transform the market, including that a customers choice may yield a higher cost but provide a cleaner/greener energy product.

For the aforementioned reasons, I cannot support the proposed program implementation of the JCP&L Green Pilot.

(SIGNED)
CONNIE O. HUGHES
COMMISSIONER

DISSENTING OPINION OF COMMISSIONER CAROL J. MURPHY AS TO THE RETAIL GREEN MARKETING PROGRAM

I respectfully dissent from the majority ruling regarding the Retail Green Marketing Program proposed for implementation beginning in Year Two.

Discussed at this Board meeting was the concept of a retail margin to be imposed on customers. The Board did not determine the disposition of the monies garnered from this retail margin during the meeting. Previously, Governor James E. McGreevey expressed such concern about the impact of deferred balances on ratepayers that he convened a Task Force, whose charge was to review these deferred balances and make recommendations on how to pay for them. It is my strong feeling that any retail margins considered by this Board must be dedicated to the repayment of these deferred balances. This Board must retire deferred balance debt before considering, much less funding, new programs.

While I am interested in promoting renewable energy, this Retail Green Marketing Program, as presented, is vague and lacks any documented information as to the financial impact on New Jersey ratepayers. Furthermore, I do not believe that the proposal presents either a true retail setting or meaningful choice for customers.

For all the foregoing reasons, I cannot support that portion of the ruling relating to the Retail Green Marketing Program.

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

ATTEST:

KRISTI IZZO
BOARD SECRETARY



EXHIBIT II

New Jersey Board of Public Utilities

NEWS

Release # 06-03

Contact: Tracy Munford
973-648-2595

Gloria Montealegre
973-648-2134

NEW JERSEY'S BASIC GENERATION SERVICE (BGS) AUCTION LOCKS IN COMPETITIVE GENERATION PRICES FOR CUSTOMERS

NJ Customers To Pay The Best Possible Price for Energy Next Year

NEWARK, New Jersey, February 5, 2003 —The New Jersey Board of Public Utilities (NJBPU) today approved the results of the Basic Generation Service (BGS) Auctions conducted to meet the electric demands of customers who have not selected an alternative electric supplier and to make BGS available on a competitive basis. The auctions, which began Monday, February 3, lasted for two days. The Board approved auctions represents 95 billion kWh, with an approximate value of \$5.2 billion.

"While the retail market is still evolving, this innovative process allows New Jersey's consumers to receive the benefits of competition at the wholesale level," said NJBPU President Jeanne M. Fox. "Today's action provides an effective mechanism for securing the best price possible for ratepayers. We are on the right track for the best possible rates people will pay after August 1."

New Jersey is the only state in the nation to procure all of its electric needs by an internet auction. The auctions were conducted in a descending clock format designed to meet the needs of customers who currently receive BGS service through New Jersey's four incumbent electric distribution companies: Public Service Electric and Gas (PSE&G), Jersey Central Power & Light (JCP&L), Conectiv Power Delivery (Conectiv) and Rockland Electric Company (RECO). The BGS service for all four companies was bid simultaneously.

"These results illustrate that New Jersey will continue to seek innovative and effective solutions as we make the transition to a competitive electric market," Commissioner Frederick F. Butler. "The results of this auction will help New Jersey plan for the future."

10. 11. 1944

10. 11. 1944

“The BGS Auction was an open, efficient and transparent process whereby suppliers were able to participate in one of the most robust and active energy markets in the country,” said Commissioner Carol J. Murphy.

There were two separate auctions; one to serve the state’s largest customers (The Hourly Energy Price or HEP Auction) and others for small to medium-sized customers (The Fixed Price or FP Auction).

Hourly Energy Prices (HEP)

The winning bidders in the BGS – HEP Auction are: Consolidated Edison; Constellation Power Source, Inc.; Dominion Retail Inc.; First Energy Solutions; Morgan Stanley Capital Group Inc.; PSE&G Energy Resources & Trade, LLC, and PPL Energy Plus, LLC and WPS Energy Services.

HEP – 10 Month

| <u>EDC</u> | <u># of Winning Bidders</u> | <u>Closing Wholesale Price Per MW-day</u> |
|------------|-----------------------------|---|
| Conectiv | 2 | \$56.10 |
| JCP&L | 5 | \$65.25 |
| PSE&G | 8 | \$60.00 |
| Rockland | 1 | \$59.80 |

Fixed Pricing (FP)

The FP winning bidders are: Conectiv Energy Supply, Inc.; Consolidated Edison Energy, Inc; Constellation Power Source, Inc.; Coral Power, LLC; DTE Energy Trading, Inc; First Energy Solutions; J. Aron & Company; Morgan Stanley Capital Group Inc.; NRG New Jersey Energy Sales LLC; PPL Energy Plus LLC; Reliant Energy Services, Inc.; Select Energy Inc.; Sempra Energy Trading Corp; Tractebel Energy Marketing, Inc. WPS Energy Services, Inc.

FP – 10 Month – Cents per kilowatt-hour

| | | |
|----------|---|-------|
| Conectiv | 4 | 5.260 |
| JCP&L | 5 | 5.042 |
| PSE&G | 9 | 5.386 |
| Rockland | 2 | 5.557 |

FP – 34 Month – Cents per kilowatt-hour

| | | |
|----------|---|-------|
| Conectiv | 5 | 5.529 |
| JCP&L | 4 | 5.587 |
| PSE&G | 6 | 5.560 |
| Rockland | 1 | 5.601 |

“The Board’s action today is an example of how we are facilitating and monitoring deregulation to the benefit of consumers. While the immediate impact will be on the wholesale market, consumers will be the true beneficiaries,” said Commissioner Connie O. Hughes.

The NJBPU reviewed the auction results within 48 hours of the auctions closing. As offers made at the auctions are binding, there will be no post-auction negotiations. Furthermore, these competitively determined wholesale prices are locked in for the next 10 months or 34 months, regardless of conditions in the energy markets. This will assure that the type of price volatility experienced in California does not occur in New Jersey.

The BGS Auction was continuously monitored by Board staff, as well as by the Board’s consultant Charles River Associates, a firm with extensive experience in similar type auctions. The monitoring structure was instituted to ensure that the auction rules were followed and to prevent collusion by bidders. The auction manager was National Economic Research Associates, an international firm of consulting economists.

Winning bidders are required to assume the responsibility of a PJM Load Serving Entity for their portion of the BGS load, including capacity, energy, ancillary services and transmission.

“During this time of uncertainty over events overseas and the potential of volatile fuel costs, we are very pleased with the results of the energy auction,” said Commissioner Jack Alter.

The New Jersey Board of Public Utilities (BPU) is a state agency and regulatory authority mandated to ensure safe, adequate, and proper utility services at reasonable rates for New Jersey customers. Critical services regulated by the BPU include natural gas, electricity, water, wastewater, telecommunications and cable television. The Board has general oversight responsibility for monitoring utility service, responding to consumer complaints, and investigating utility accidents. To find out more about the Board of Public Utilities, visit our web site at www.bpu.state.nj.us.

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BREAKING NEWS **Reuters****New Jersey locks in electric prices through auction**

Reuters - February 6, 2003

NEW YORK, Feb 6 (Reuters) - A two-day energy auction in New Jersey earlier this week locked in competitive wholesale electric prices for most state customers starting August 1.

The New Jersey Board of Public Utilities said in a statement late Wednesday it approved of the results of the auction to meet the electric demands of customers who still receive power from their local power company.

The auction, which began on Feb. 3, represented 95 billion kilowatt hours of electricity worth about \$5.2 billion.

A kilowatt hour is enough power for an average house for 60 minutes.

The four electric utilities in New Jersey are Public Service Enterprise Group Inc.'s ((PEG.N)) Public Service Electric and Gas (PSE&G), FirstEnergy Corp.'s ((FE.N)) Jersey Central Power & Light (JCP&L), Pepco Holdings Inc.'s ((POM.N)) Conectiv Power Delivery and Consolidated Edison Inc.'s ((ED.N)) Rockland Electric Co.

The process involved two concurrent auctions.

One, called the Hourly Energy Price or HEP auction, was to secure sufficient electricity to serve about 1,700 large business customers statewide, representing 2,600 megawatts (MW) of load, for a 10-month period.

The other, a general auction in tranches of 10- and 34-month periods, was to secure electricity to serve smaller business and all residential customers, representing about 15,500 MW of load.

Your Max
Could Be
Higher



One megawatt is enough power for about 1,000 homes.

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US 20030023540A2

(19) **United States**(10) Pub. No.: **US 2003/0023540 A2**(12) **Patent Application Publication**(43) Pub. Date: **Jan. 30, 2003****Johnson et al.****REPUBLICATION**(54) **BIDDING FOR ENERGY SUPPLY****Publication Classification**(75) Inventors: **Jack J. Johnson, Summit, NJ (US);
William F. Coyle, Summit, NJ (US)**(51) Int. Cl.⁷ **G06F 17/60; G01R 11/56;
G06F 17/00; G01R 21/133**(52) U.S. Cl. **705/37; 705/412**

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An auction service is provided that simulates competition between energy suppliers (i.e., electric power or natural gas). A bidding moderator (Moderator) receives offers from competing suppliers specifying the economic terms each is willing to offer to end users for estimated quantities of electric power or gas supply (separate auctions). Each supplier receives feedback from the Moderator based on competitors' offers and has the opportunity to adjust its own offers down or up, depending on whether it wants to encourage or discourage additional energy delivery commitments in a particular geographic area or to a particular customer group. Each supplier's offers can also be changed to reflect each supplier's capacity utilization. The Moderator selects at least two suppliers to provide energy to each end user, with each supplier providing a portion of the energy to be used by each end user at an end-user facility during a specific future time interval.

(21) Appl. No.: **10/062,798**(22) Filed: **Jan. 31, 2002****Prior Publication Data**(65) **US 2002/0091626 A1 Jul. 11, 2002****Related U.S. Application Data**

(63) Continuation of application No. 09/542,451, filed on Apr. 4, 2000.

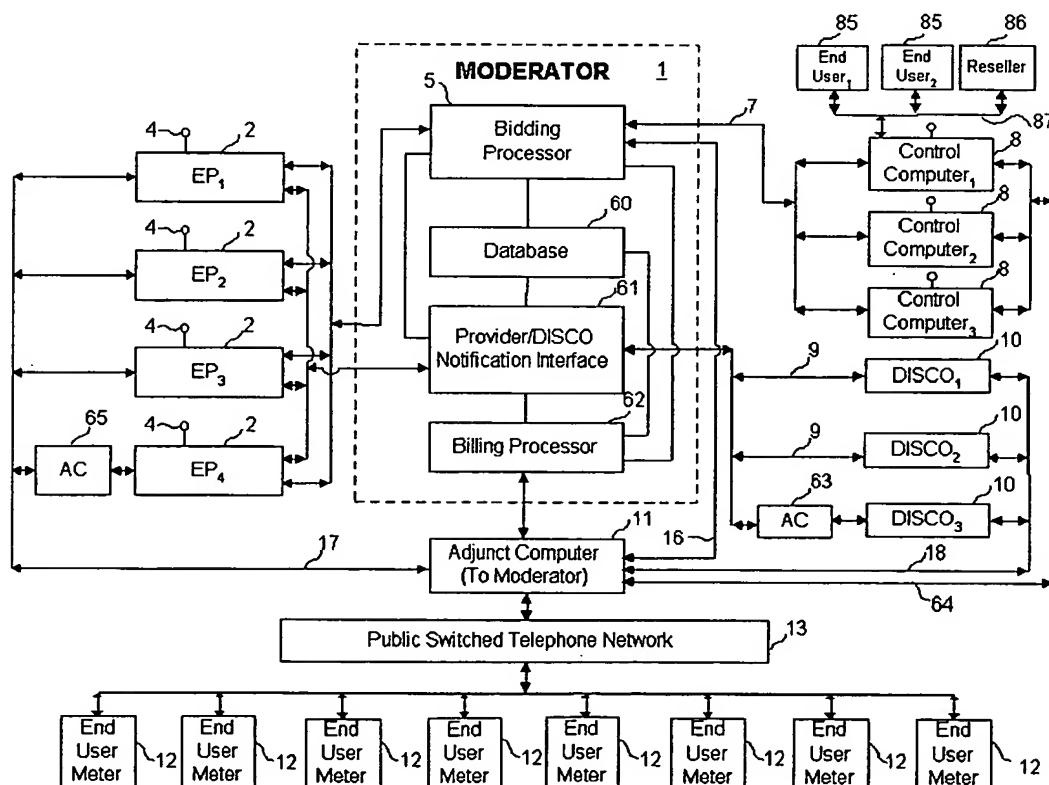
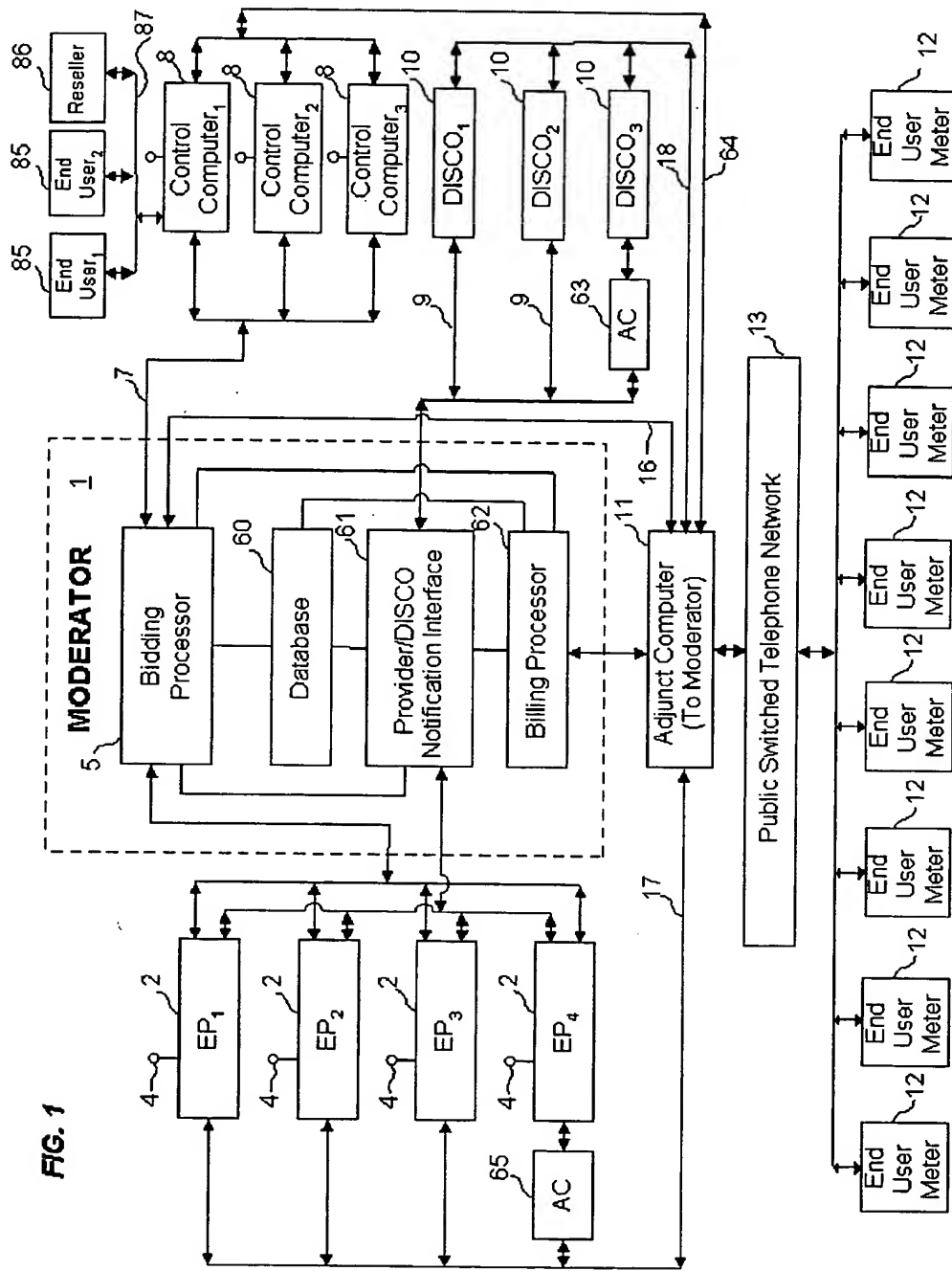
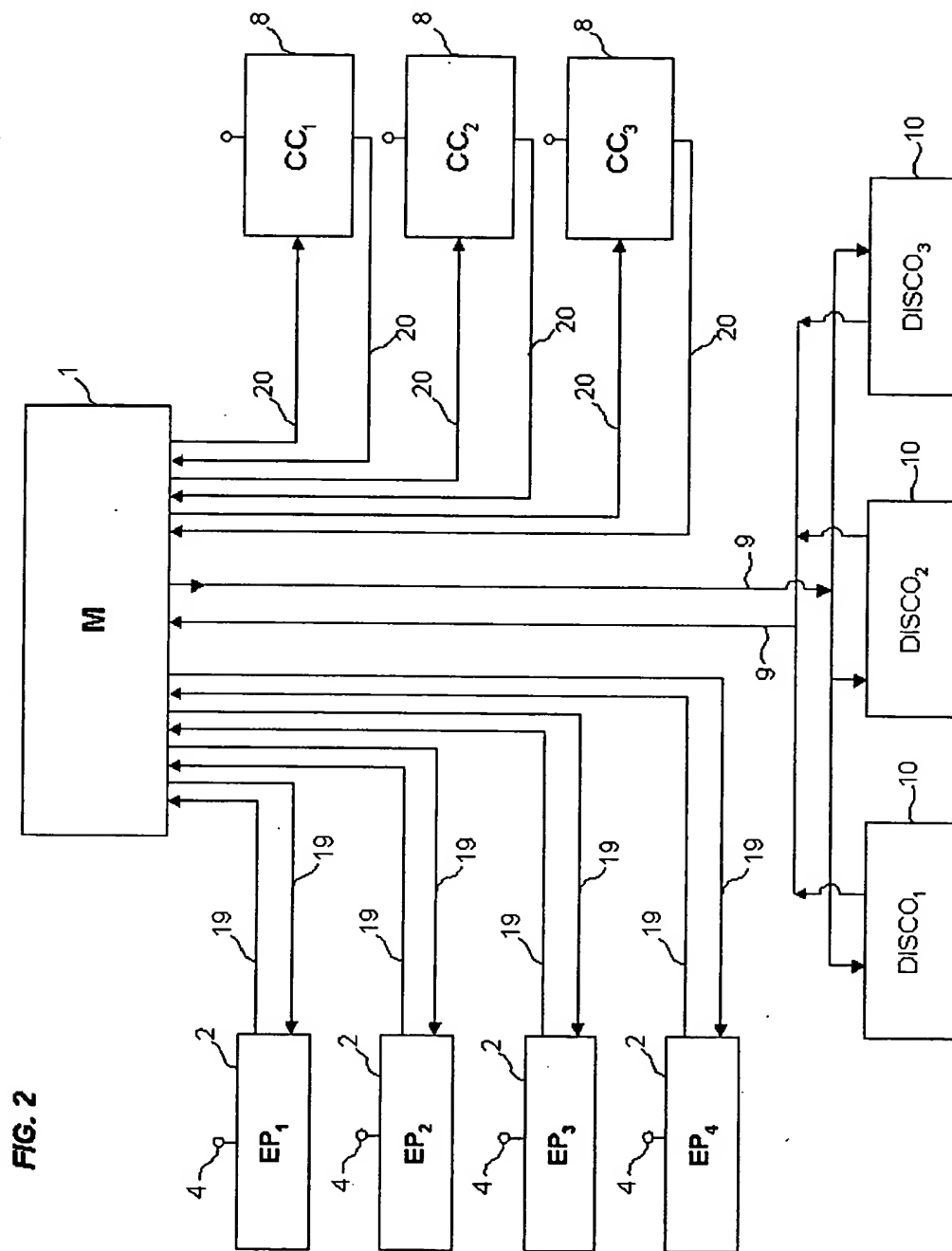
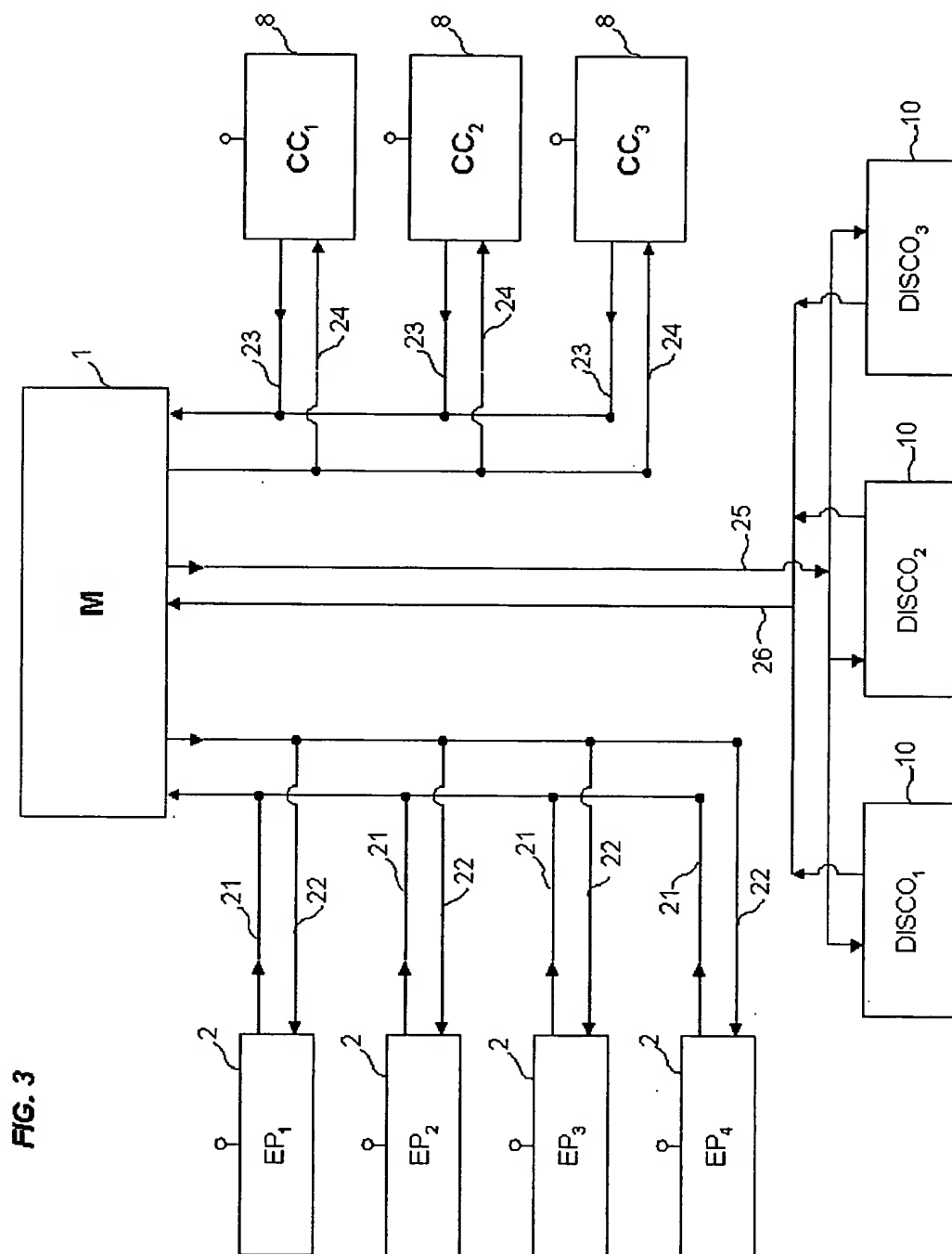
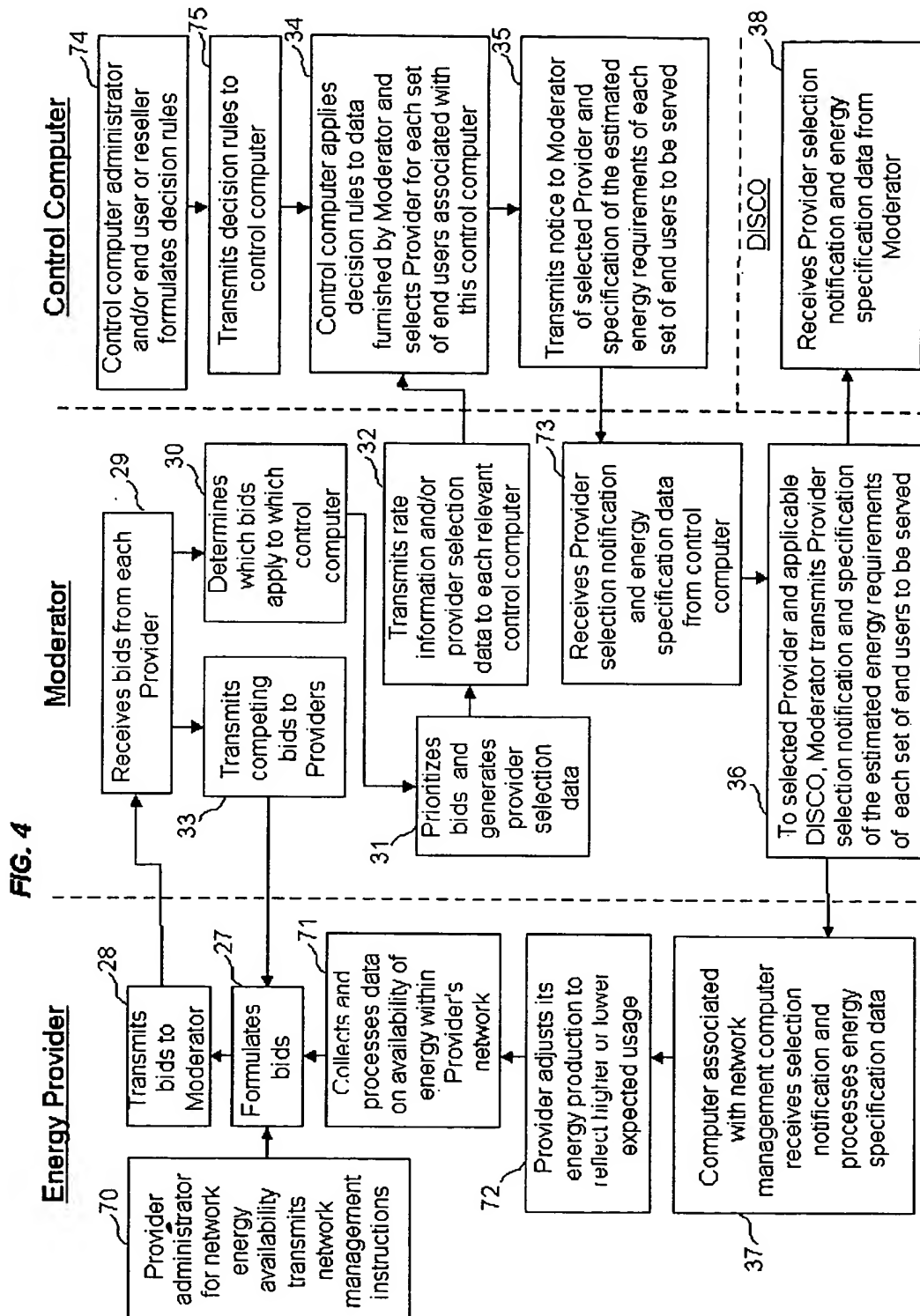


FIG. 1









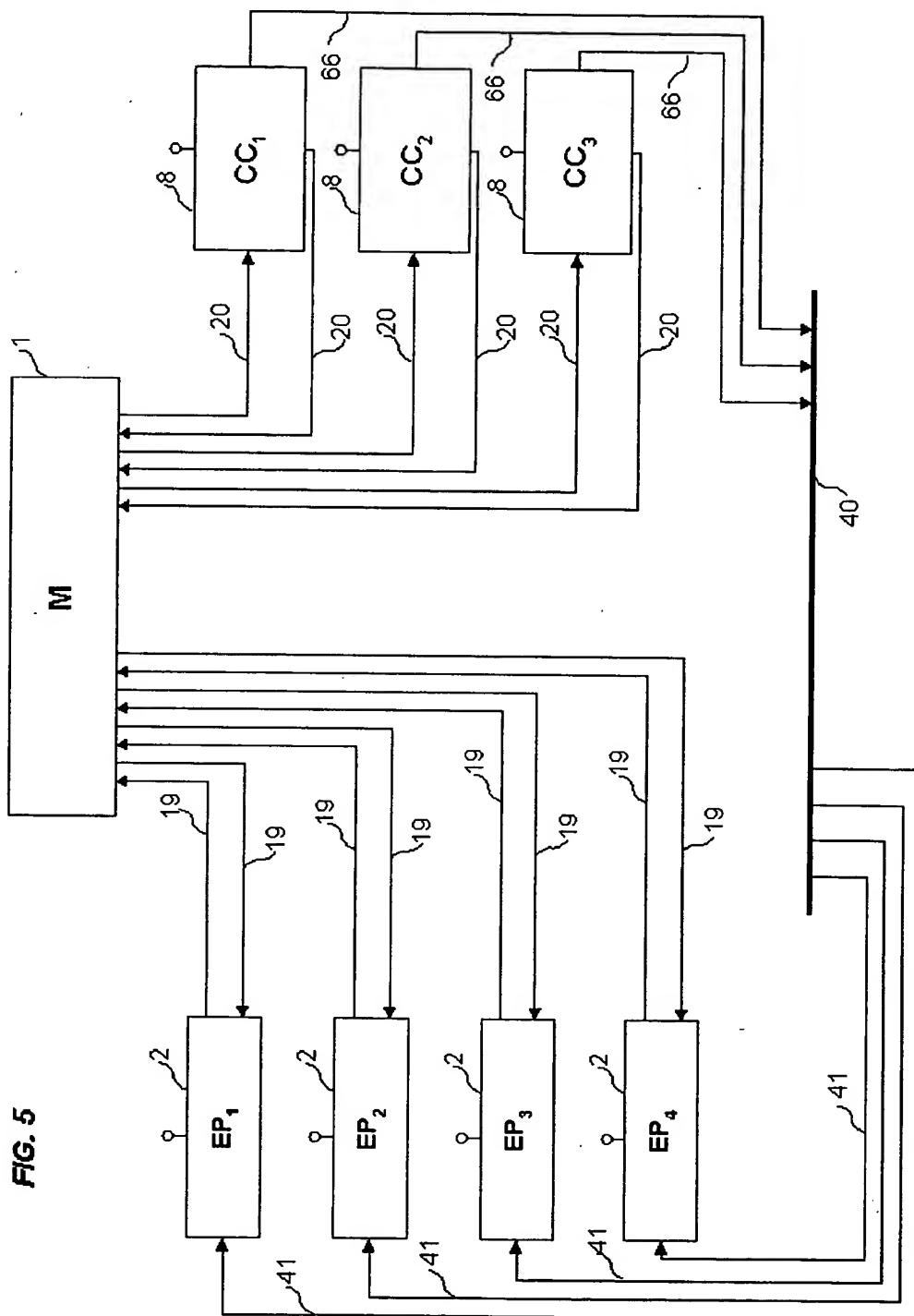


FIG. 6

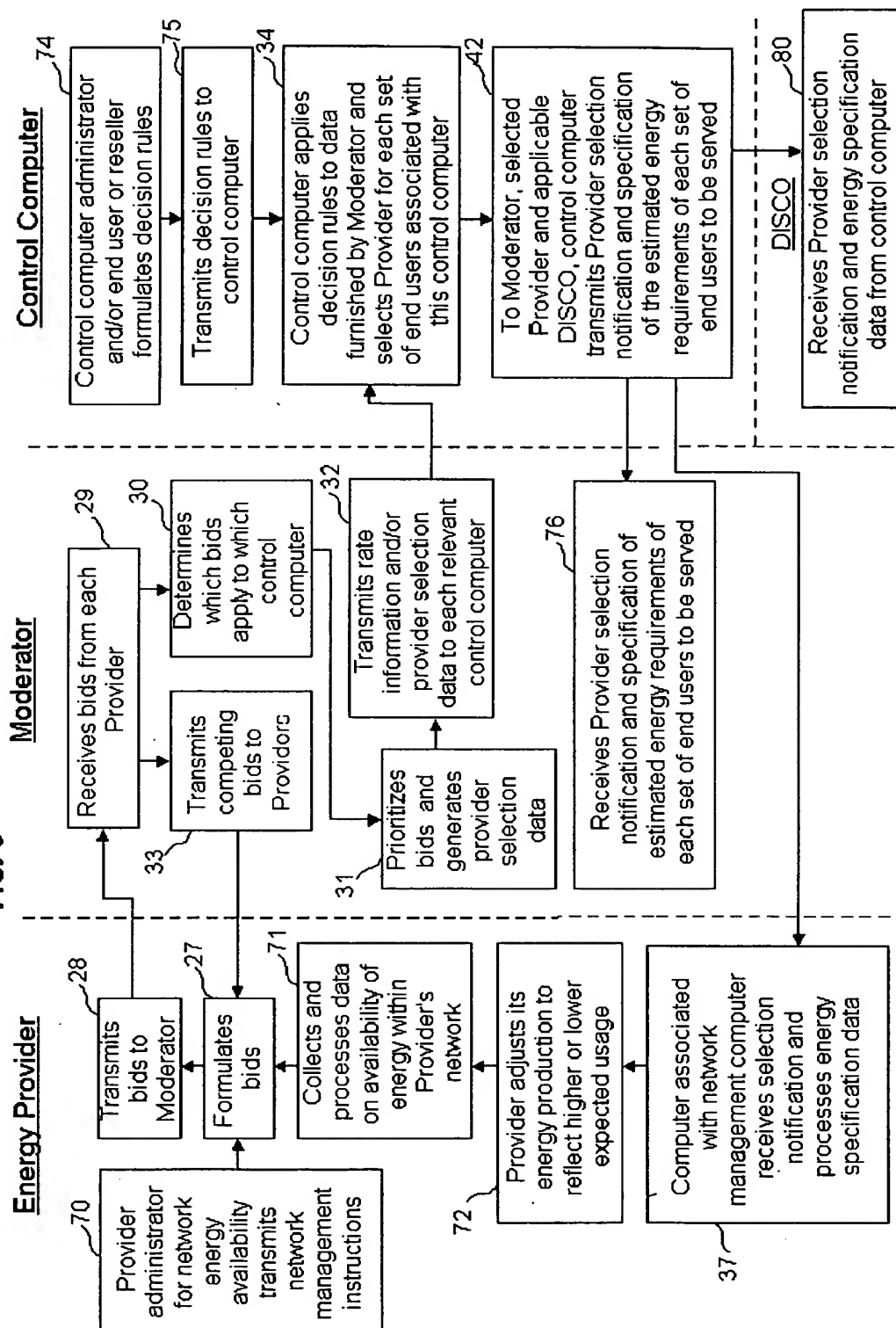
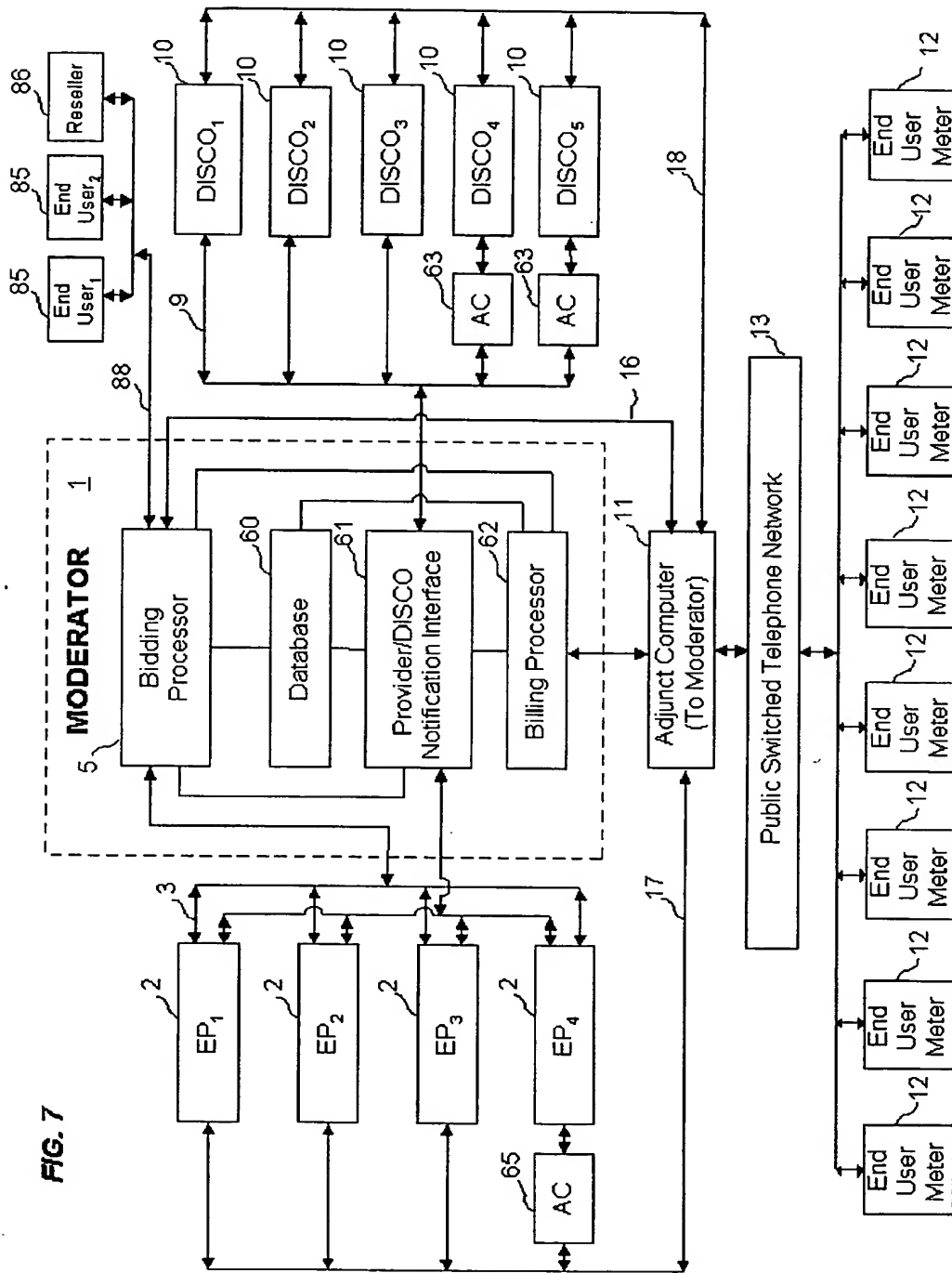
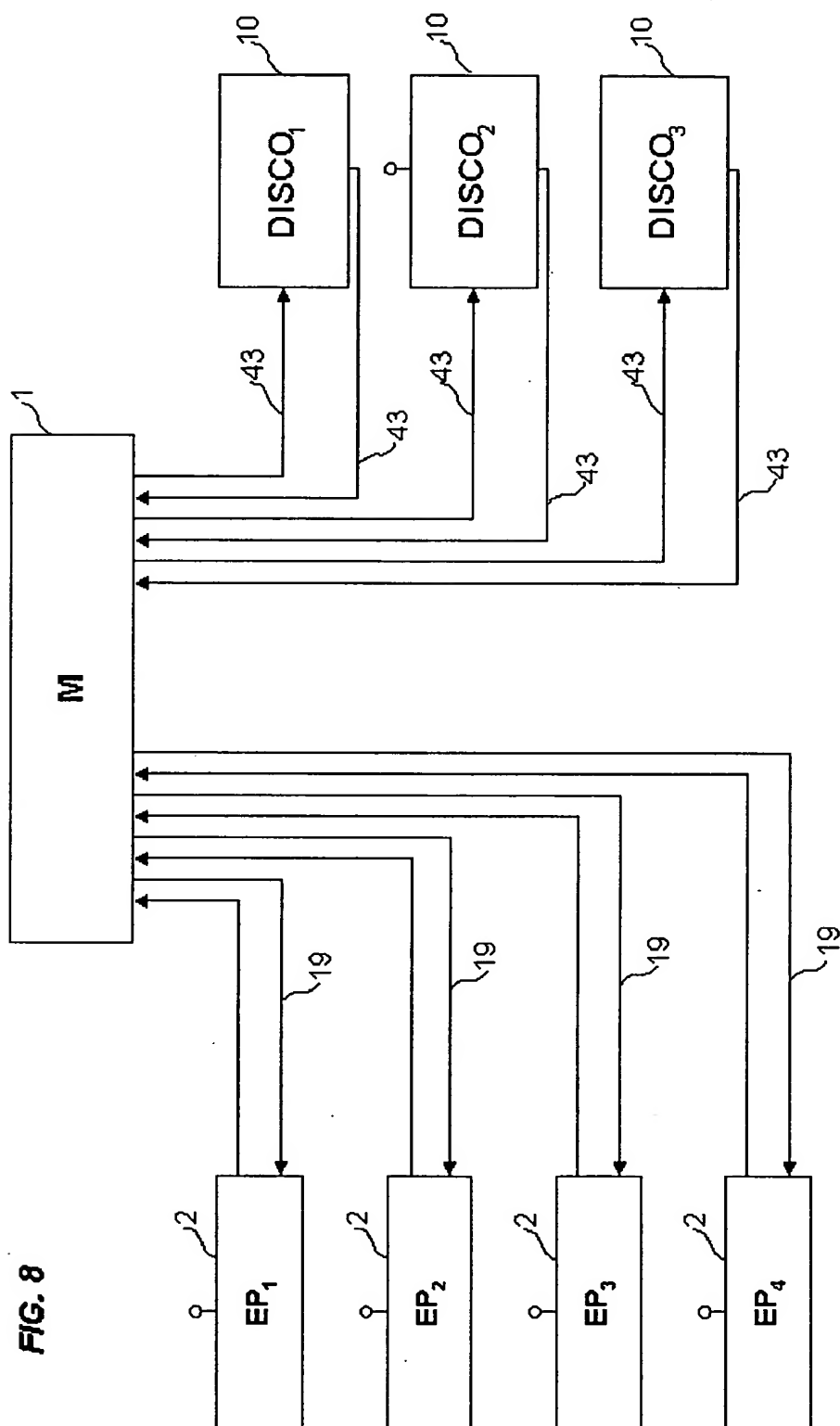
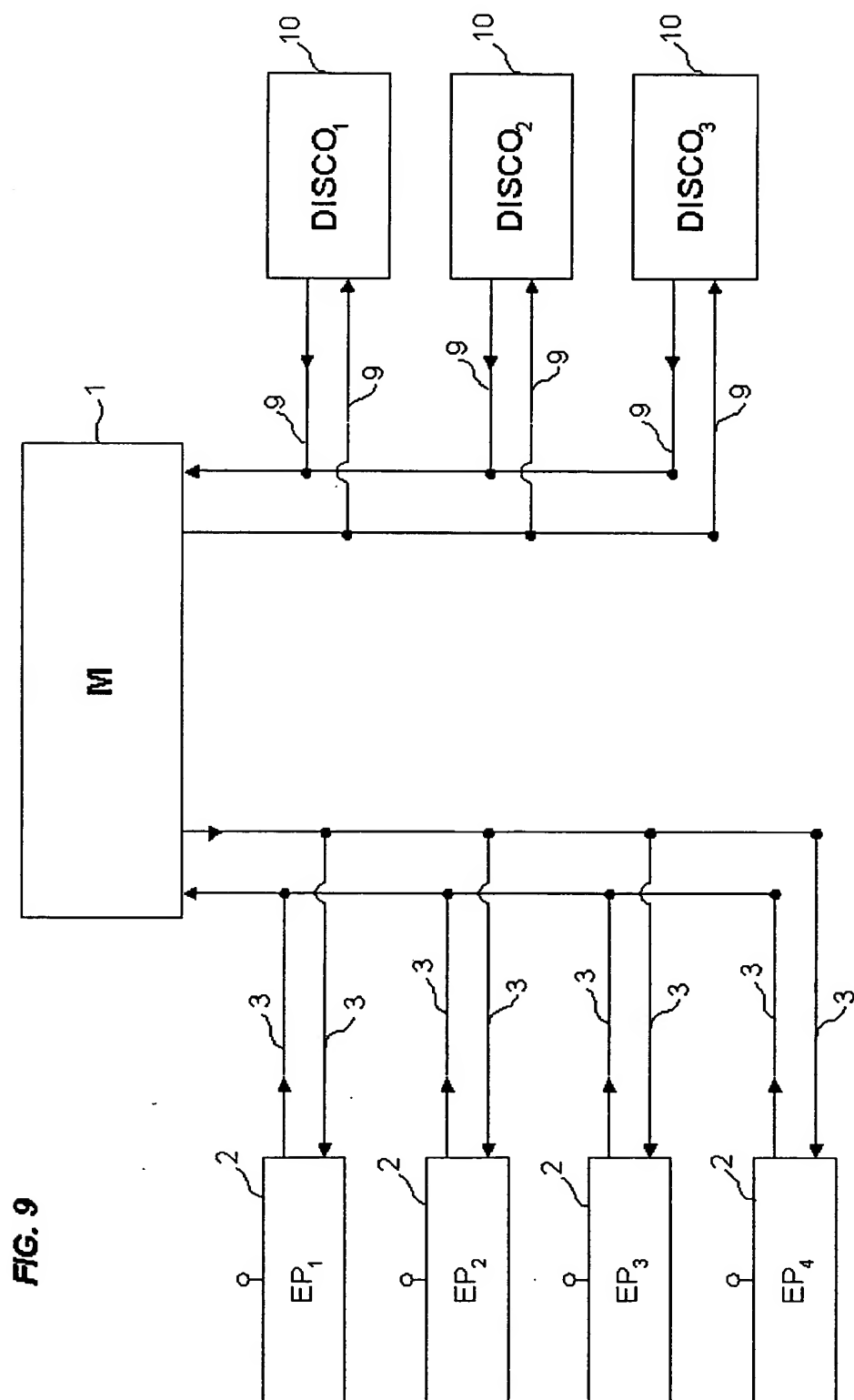
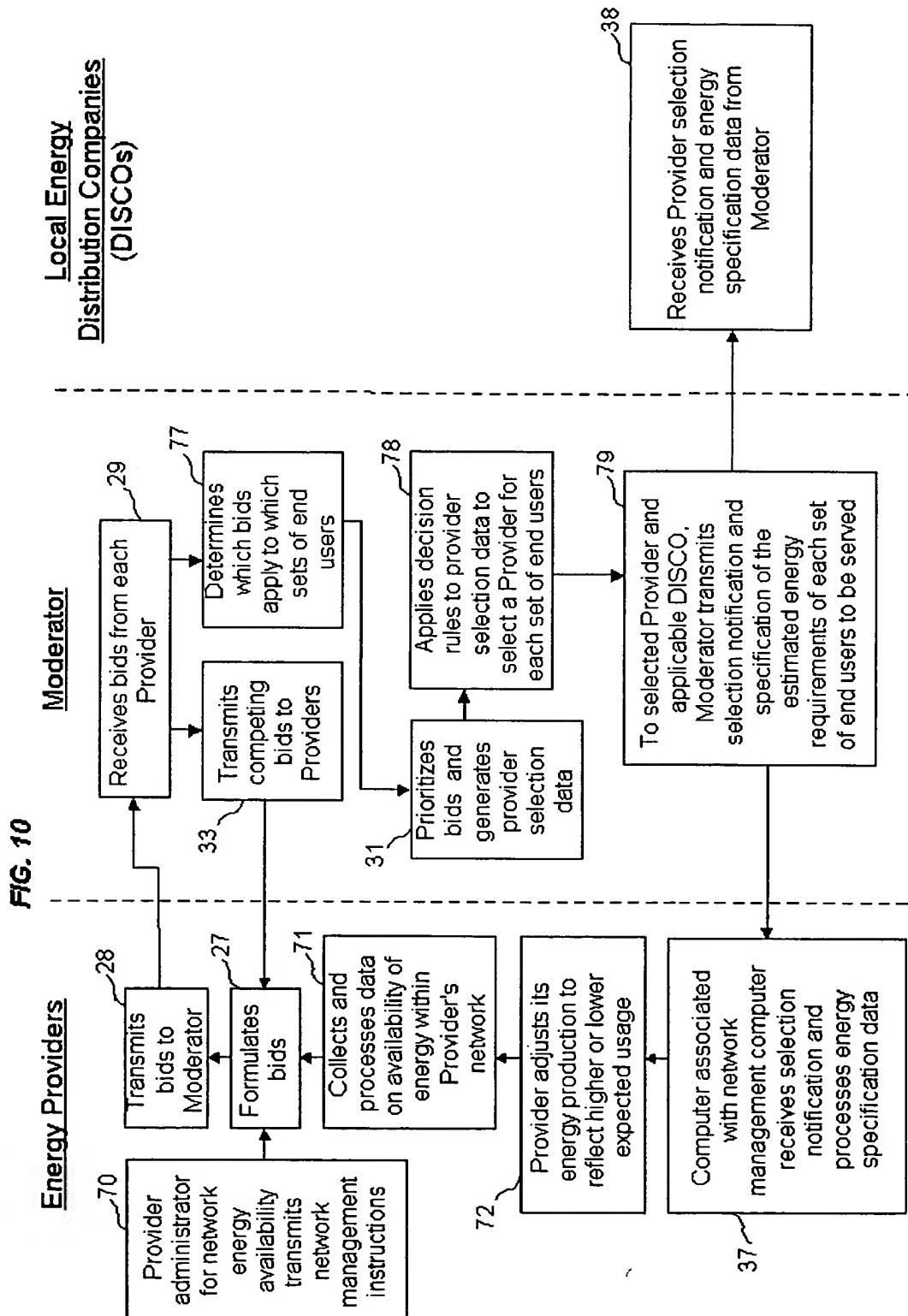


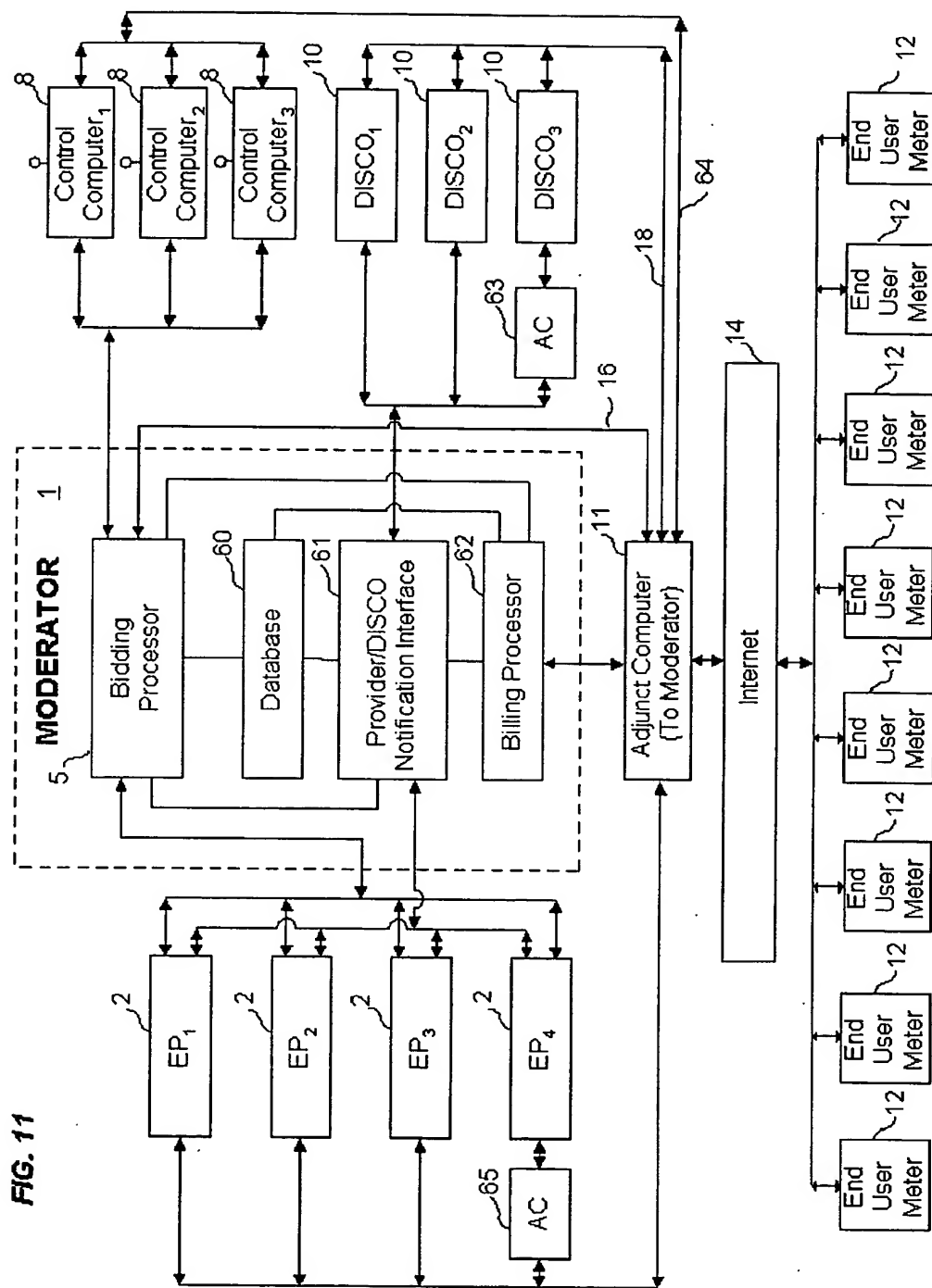
FIG. 7

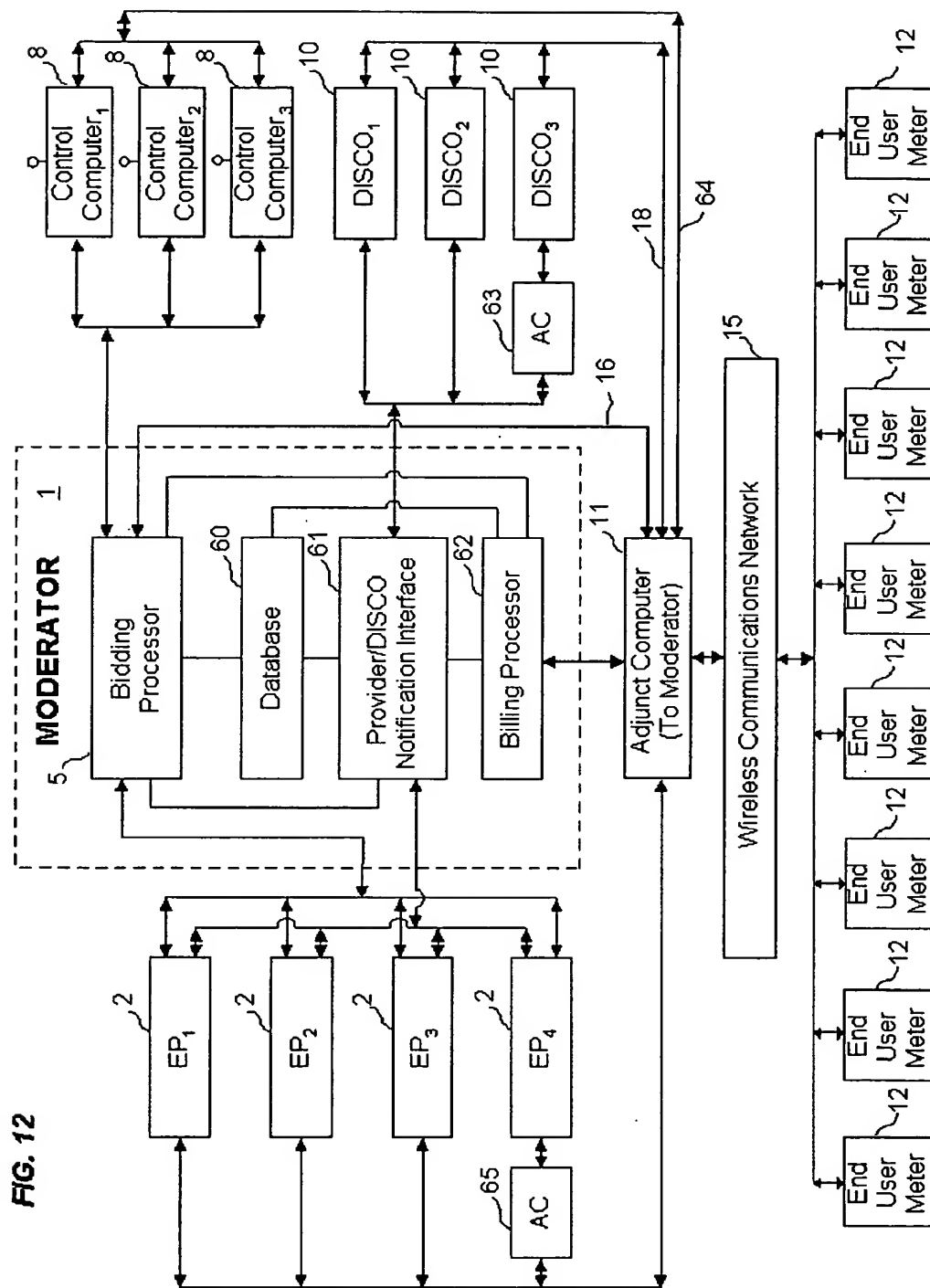


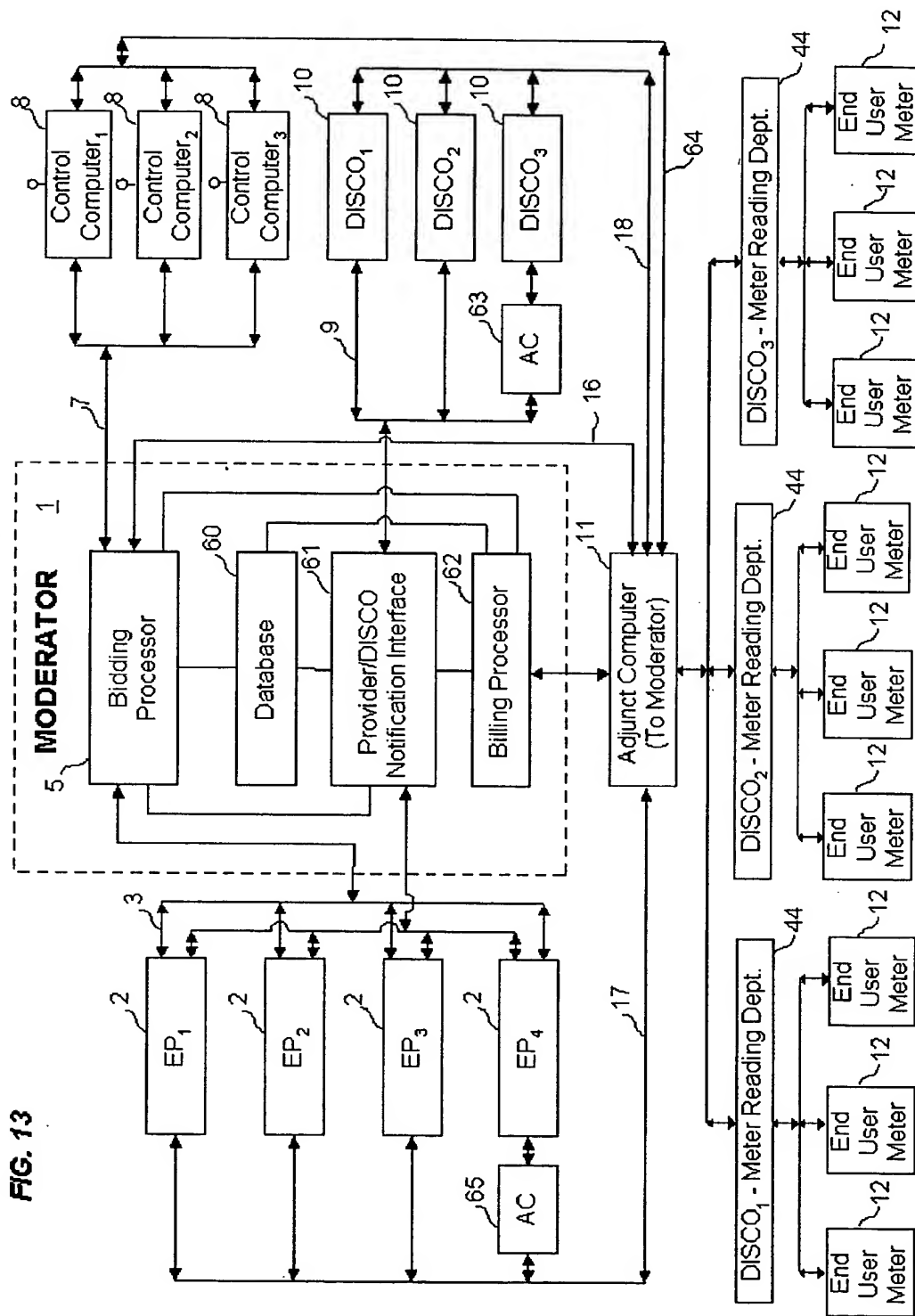












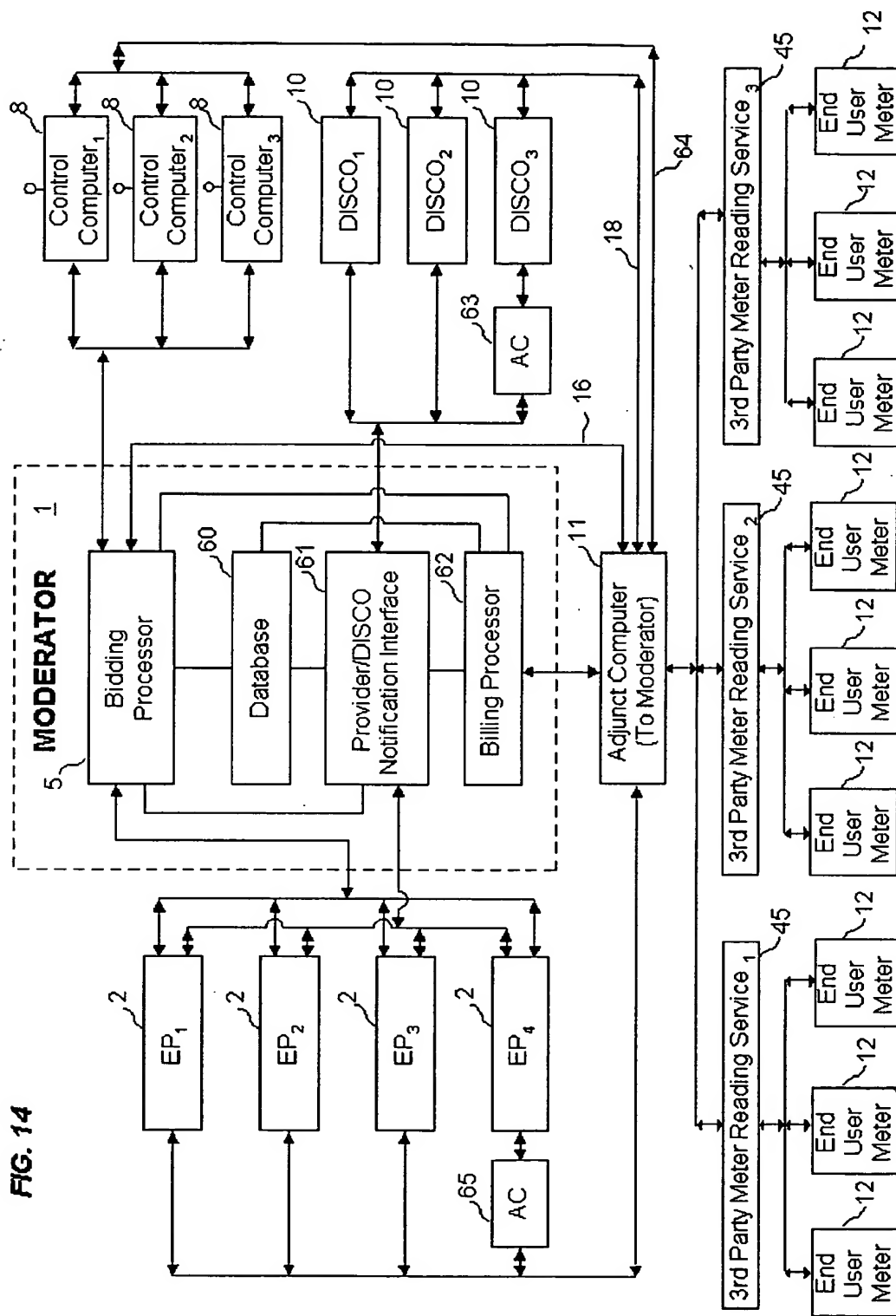
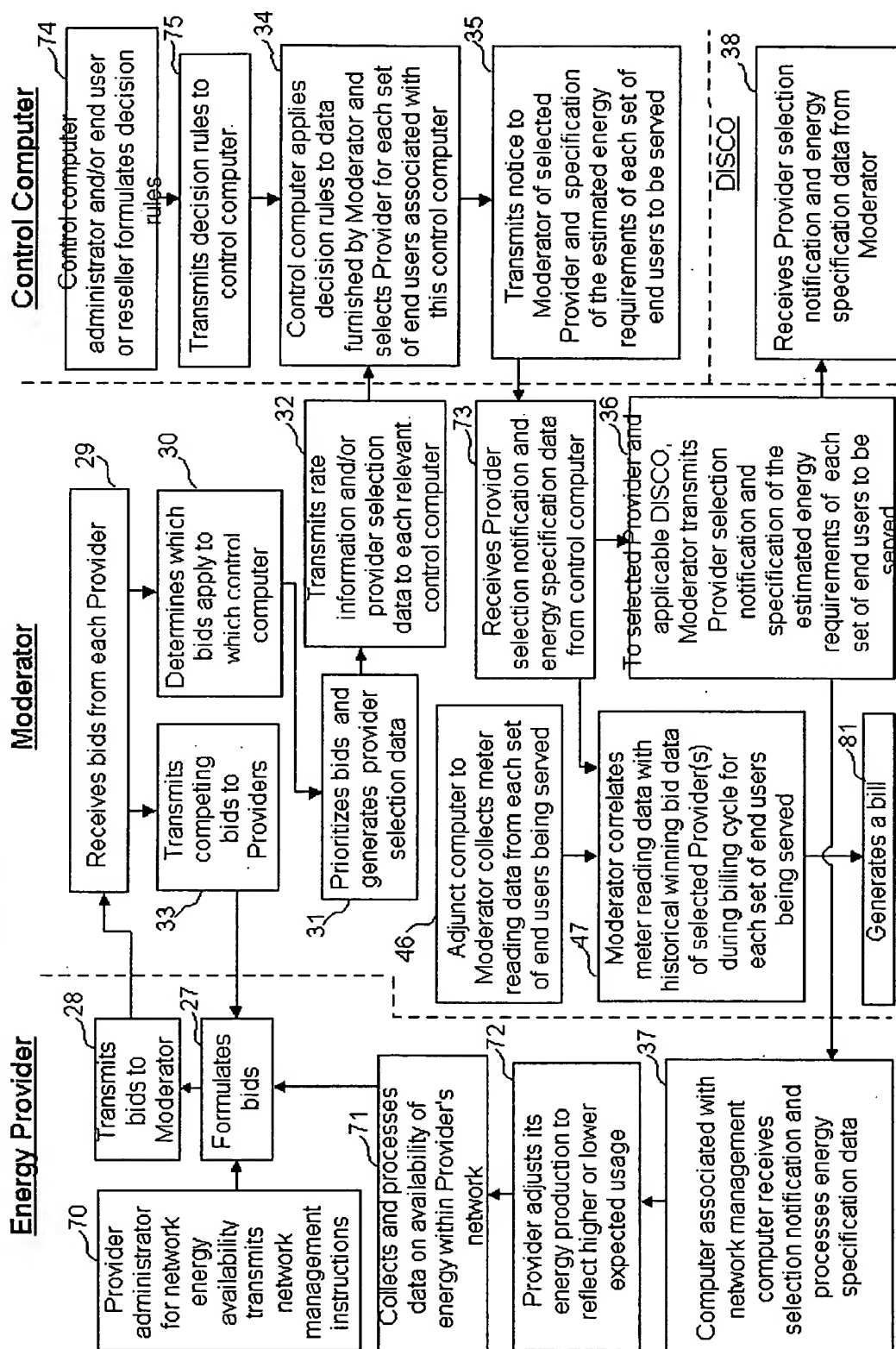
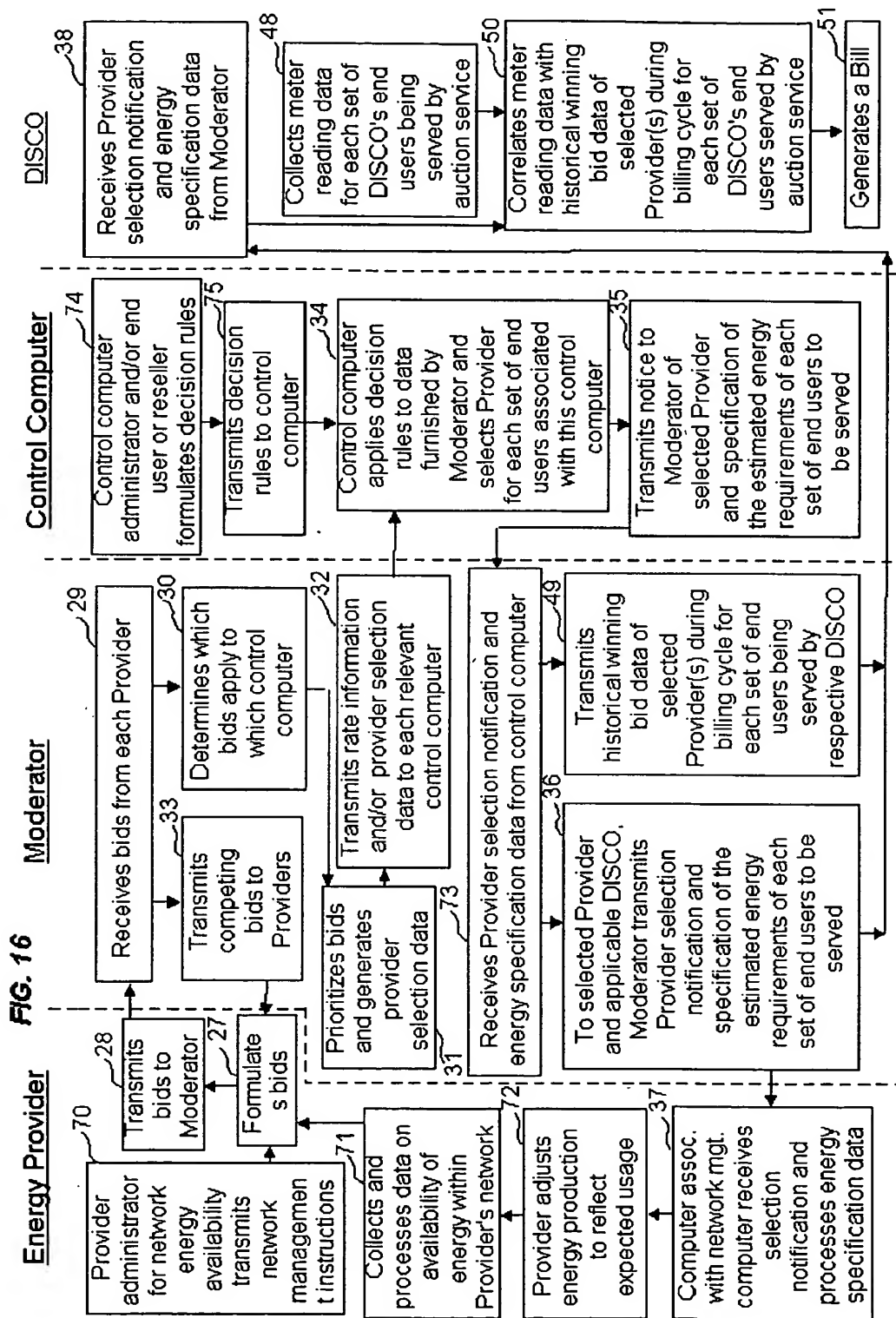


FIG. 15





BIDDING FOR ENERGY SUPPLY

Cross Reference to Related Applications

[0001] This Application claims the benefit of the priority of Provisional Applications Serial # 60/039,041 filed February 24, 1997 and Serial # 60/064,421, filed October 30, 1997 and returnFillreturnFill Application Serial # 09/023,968, filed February 13, 1998, now U.S. Pat. #6,047,274, issued April 4, 2000, and is a Continuation of co-pending Application Ser. #09/542,451, filed April 4, 2000.

Background of Invention

[0002] The electric power and natural gas industries will experience fundamental changes over the next few years as the results of continuing deregulation take hold. One of those results is to give end users a choice of energy providers. Until now, substantially all end users purchased the electric power or natural gas they needed from the local electric or gas utility serving their geographic area. Electric utilities have generally operated as vertically integrated local monopolies, producing or purchasing (on a wholesale basis), the quantities of electric power they needed to serve all end users within the utility's geographic boundaries. Natural gas utilities have generally operated in a similar fashion, though usually purchasing rather than producing most of the natural gas they need. According to the Federal Energy Information Administration, legislation to deregulate the electric power industry has been adopted in five states and is pending in over 20 others. In general, this legislation calls for a restructuring of the industry into at least three kinds of participants: (i) electric power generating companies, (ii) long-haul transmission companies, and (iii) local distribution companies (DISCOs). Power generators will include companies that own actual generating facilities as well as those firms that purchase generating capacity from others and market that available power directly to end users. Under most of the various legislative approaches, an end user will be given the opportunity to purchase its electric power from any legitimate power generating company willing to supply electric power to that end user's geographic region. One of the primary aims of electric power deregulation efforts nationwide is to reduce end user's energy prices by introducing competition among power generators. As competition increases, power generators are expected to offer prospective customers various pricing plans premised, for example, on volume and term commitments, and peak/off-peak usage. Under most of the pending deregulation schemes, the local distribution company facilities of the local electric utility will continue to be a government-regulated monopoly within the region it serves. These facilities are primarily the wires and other equipment constituting the local power grid over which electric power is transmitted to end user locations, having been delivered to the grid by generating plants within the local utility's service area or by other utilities' grids interfacing with that local utility's grid (when the local utility purchases electric power today from suppliers outside of its service area). In the natural gas industry, similar deregulatory efforts are underway to enable greater competition and customer choice. The wholesale purchase and sale of natural gas has already been mostly deregulated. In some states large industrial and commercial customers can purchase their natural gas directly from gas producers rather than from the local gas utility. Most industry observers

expect local natural gas utilities to be restructured in the near future to follow the model being used in the electric power industry as a result of deregulation, with three similar components: (i) natural gas production companies, (ii) gas pipeline transmission companies, and (iii) local distribution companies (DISCOs). Gas producers will include companies that own actual production facilities as well as these firms that purchase production capacity from others and market that available gas directly to end users. End users are expected to be given the opportunity to purchase the natural gas they need from any of numerous natural gas producers willing to supply natural gas to that end user's locale. Under most of the expected deregulation models, the local distribution company facilities of the local gas utility will continue to be a government-regulated monopoly within the region it serves. These facilities are primarily the pipelines and other equipment constituting the regional gas pipeline network through which natural gas is transported to end user locations, having been delivered to the regional network by production facilities within the local utility's service area or, more often, by long-haul gas pipeline transmission companies transporting natural gas from production facilities to the local utility's regional pipeline network. Meter reading and billing of end users has until now generally been handled by the local distribution utility as part of its local franchise. As a result of deregulation, however, the local distribution utility is expected in many jurisdictions to lose this monopoly over meter reading and billing. The various state public utility commissions (PUCs) in those states where electric power deregulation plans are at an advanced stage, for example, are considering giving power generators the right to read meters and render their own bills without the cooperation of the local distribution utility. In many cases, the power generator or end user may have the right to determine who will own the meter and whether the end user will receive separate bills (one for energy consumption from the power generator and another for the distribution and service charges of the local distribution utility) or a consolidated bill, as is the case today. Many industry experts expect independent service entities (not necessarily affiliated with, but acting as agents for, power generators or gas producers, local distribution utilities, end users, or any combination thereof) to provide meter reading and billing services on a more efficient basis than local electric and gas utilities do today. Both electric and gas utilities rely primarily on meters at customer sites to apprise them of how much energy the customer has taken from the utility's supply lines running down the street. Many of these meters can measure (i) the volume of energy used (e.g., kilowatt-hours of electricity), (ii) the highest volume used during any hour throughout a monthly billing cycle (peak demand), and (iii) the volume used in every hour of the monthly billing cycle (or as short a period as every 15 minutes during this cycle). Some meters, such as those used by larger industrial and commercial end users, can measure all of the above. Other meters measure only total monthly volume and peak demand. Meters servicing residential customers often measure only total volume used during the month. Today, most end users have meters that require a physical on-site visit by the local utility to read the meter in order to determine the end user's actual energy usage since the last time the meter was read. Typically, such on-site visits are made once a month. If the local utility fails to make such a visit, the end user's energy usage for that month is estimated and billed based on prior

usage. Billing is then reconciled after the next on-site meter reading. More sophisticated meters now available enable the local utility to monitor the end user's actual energy usage electronically, without requiring a physical on-site visit to read the meter. Employing these meters, the local utility can continuously monitor the end user's actual energy usage by taking readings every 15 minutes throughout the day, if necessary. Some local electric utilities, for example, require their largest customers to install these electronic remotely-readable meters so that the utility can monitor these customers' actual usage throughout the day and, as a result, better manage and balance the overall load on its local power distribution grid. Industry experts expect meter manufacturers within a few years to reduce this monitoring window to under five minutes. Whether the meter is read by an on-site visit or via remote communication, today the local utility records that energy usage data and applies its applicable tariffed rate to produce a bill for the end user. These tariffs, filed by the local utility with the applicable state PUC, set forth specific rates to be charged to different classes of customers - e.g., large industrial and commercial end users often pay rates based on peak demand as well as total volume consumed, whereas the rates paid by residential customers typically relate only to total volume consumed. Some tariffs call for different rates depending on time of use (e.g., peak v. off-peak pricing). In general, large customers pay lower rates than small customers. As deregulation progresses, competing energy providers are expected to offer end users myriad pricing plans and contractual arrangements geared to time of use, volume and term commitments, etc. Power generators will compete with other power generators just as gas producers will compete with other gas producers. An active wholesale market exists for electric power. Power generators, local electric utilities, resellers, independent traders and brokers actively buy and sell electric power among themselves. A power generator may wish to sell excess generating capacity not required for its own operations or not contractually committed to any utility, or may need to purchase additional power to satisfy its generating commitments. A local electric utility may be selling excess generating capacity (from its own generating plants) or buying power from nearby utilities, resellers, traders or brokers to cover a shortfall in its own supply (e.g., during certain peak periods). Resellers and traders may be fulfilling take-or-pay or supply contracts they have with power generators, local utilities or each other or just buying or selling based on speculation about the future price of power in the spot market. Under deregulation, the local electric utility will no longer have a monopoly on selling power to end users. Power generators, other utilities, resellers, brokers and other power marketers will all be able to sell electric power directly to end users. In the wholesale power market, buyers typically take title to the electric power they purchase at well-established interfaces or transfer points on a regional power grid (e.g., the Oregon-California border). In many cases, however, the purchase arrangement may call for title to be passed at some alternate point, such as (i) the point on the regional grid nearest the seller's generating facility or (ii) if the buyer is a local distribution utility, the point(s) on its local grid where the grid interfaces with the power grids of neighboring utilities. Before this power can be delivered to the buyer at the agreed transfer point, the seller must schedule a contract path for this power to travel from the seller's generating facility (or the point at which the seller

is to take title if the seller purchased this power from another source) to the transfer point. The buyer must, in turn, schedule a transmission path from the transfer point to the buyer's own grid interface (if the buyer, for example, is a local distribution utility) or, if the buyer is reselling this power to another party, to a transfer point agreed to by such other party. Scheduling contract or transmission paths is usually coordinated through the regional grid controller(s) for the power grids over which this power is to be transmitted. The regional grid controller manages one or more local power grids, keeping demand on the combined grid in balance with available supply at all times. Generally, but not always, the affected power grids are those owned and controlled by the electric utilities whose service areas are situated between the source of this power and the transfer point. The charges for transmission of the purchased power to and from the point at which title is passed are normally borne by the seller and buyer, respectively. In many states or geographic regions, local electric utilities have formed wholesale power pools in which they share power, as needed, with other members of the pool under arrangements and according to rules previously agreed to by all the members. In some of these power pools, the members' generating facilities and key portions of their respective power grids are placed under the control of a regional or pool controller who manages the continuous balancing of power being transmitted across these grids for greatest efficiency and at lowest cost to the members. The pool controller in some cases, for example, will advise the pool members on one day of the power he expects to need during each hour of the following day, in order to satisfy the projected aggregate demand on the pool's combined grid by the utilities' customers. Each member is invited to submit offers (quantities and prices) of the power it is willing to supply to the combined grid. Starting with the lowest-priced power first, the controller accepts such offers until he reaches the aggregate quantity he needs for each hour of the next day. Typically, the clearing price - the price of the last unit of power needed by the controller to meet his projected demand for each hour - is used to set the price that all suppliers for that hour will receive, notwithstanding that some of the accepted offers were at prices lower than the clearing price. This approach ensures an efficient but equitable least-cost wholesale pricing arrangement among the pool members. As deregulation efforts have gained momentum in the electric power industry, similar pooling arrangements have been explored to make the wholesale market more efficient but also to give energy marketers not affiliated with a local utility a reasonable chance to compete. The California Public Utilities Commission, for example, has proposed a power exchange to which the three largest in-state electric utilities must sell all their generated power and from which they must also buy all the power they need for distribution to their end user customers. Other power generators, utilities, resellers, traders and brokers can also buy and sell power through this exchange. Each day the operator of the power exchange will assess the next day's power supply requirements for the three largest utilities' customers as well as all those of the other local utilities in California to be supplied power via the exchange. The operator will ask power generators, local utilities with generating capacity, resellers and traders (and any others willing to supply electric power to the exchange) to submit asking prices for specified quantities of power to be deliv-

ered to the California power grid during each hour of the next day. Starting with the lowest-priced power first, the exchange operator will then match its assessed needs for power during each hour of the next day against the offered power until the operator has identified sufficient power supplies for each hour to meet its anticipated demand. The price at which this offered power is accepted by the exchange operator will be the purchase price payable to the power provider. The power exchange plans to publish these prices every day. Similar exchange or pooling arrangements are being studied by other state public utility commissions as part of their deregulation proceedings. One of the primary objectives of deregulation is to reduce energy costs for end users by fostering competition among energy providers. Most electric power industry analysts, for example, assume that end users will only realize significant savings if they move to time-of-use pricing (e.g., peak v. off-peak). In many states, larger end users are already subject to different prices based on the cost to the local electric utility of supplying power during periods of peak demand across its service area. In general, the cost to providers of generating power during peak demand hours can be dramatically higher than at other times of the day. The greater efficiency of the wholesale market and increased visibility of wholesale prices is expected to influence the pricing plans that providers will be willing to offer end users, especially those end users who are willing to pay different prices based on (i) when during the day they typically need more or less power and/or (ii) whether they can alter their current power consumption patterns to conserve usage during the hours of highest demand within the local utility's service area. An active wholesale market also exists for natural gas. Gas producers, local gas utilities, resellers, independent traders and brokers actively buy and sell natural gas among themselves. A gas producer may wish to sell excess production capacity not required for its own operations or not contractually committed to any utility or other party, or may need to purchase additional gas supplies to satisfy its production commitments. A local utility may be buying natural gas from producers, other utilities, resellers, traders or brokers to secure its necessary supplies or may be selling gas to many of these same parties if it has excess supplies. Resellers and traders may be fulfilling take-or-pay or supply contracts they have with gas producers, local utilities or each other or just buying or selling based on speculation about the future price of natural gas in the spot market. Gas producers, other utilities, resellers, brokers and other natural gas marketers will all be able to sell natural gas directly to end users under most deregulation models for the natural gas market. In the wholesale natural gas market, buyers may take title to the gas they purchase at any of several possible transfer points from the gas production facilities to the interface between the long-haul transmission pipeline transporting the gas and the local utility's regional pipeline network. Scheduling transmission of newly purchased or sold gas is usually coordinated with the operator of the long-haul transmission pipeline expected to transport this gas to the buyer. The charges for transmission of the purchased gas to and from the point at which title is passed are normally borne by the seller and buyer, respectively.

Summary of Invention

[0003] The provision of electric power and natural gas to end users is dominated by fixed price arrangements set

according to (i) orders promulgated by the federal or state governmental bodies regulating providers, (ii) tariffs filed with such governmental authorities by the providers, or (iii) contractual arrangements between providers and end users. However, because of technological and regulatory changes, the provision of these sources of energy is becoming more of a commodity, with competition between providers expected to increase dramatically in the next few years. The invention disclosed herein provides an auction service that will stimulate this competition and facilitate the consumer's ability (and that of resellers) to make economic choices between providers. In this method and system, providers supply energy (i.e., electric power or natural gas) to end users (or resellers) in accordance with economic incentives (e.g., lowest price) resulting from a bidding process between participating providers, administered by a bidding service entity through operation of a central processor, a computer referred to as a bidding moderator (the Moderator). The bidding process to supply electric power will be conducted separate and apart from the bidding process to supply natural gas. Power generators will compete only with other power generators. Gas producers will compete only with other gas producers. However, for ease of reference, power generators and gas producers are each referred to herein as energy providers or just Providers. Through this auction, Providers will be apprised of the bids of competing Providers and have an opportunity to modify their bids accordingly. Each of the Providers transmits to the Moderator the rate it is willing to charge (or other economic incentive it is willing to offer) for electric power or natural gas to be provided to an end user or group of end users (or a reseller or group of resellers), over some particular period of time. For purposes of this application, resellers can be Providers or buyers of energy supply. This bid may be lower than that Provider's established rate for any of several reasons (e.g., the Provider has excess generating or production capacity at that time). The Provider may, for example, also decide for capacity or competitive reasons to place different bids on energy to be provided, for example, to different end users at different times of day and at different destinations (e.g., with higher prices for electric power supplied during daily peak demand periods or for power delivered to destinations at greater distances from the Provider's power generation facilities). The Provider may change its bids as often as it likes as marketplace demands for energy change or in response to competitors' bidding activities. The Moderator collects this bid information from all the Providers, sorts it according to the rules of the auction (e.g., sorting it among delivery destinations - such as the grid interfaces of local electric distribution companies serving end users), and may further process this bid information, for example, to select Providers for particular end users or resellers. This provider selection information may include, for example, a prioritization of the Provider selection in accordance with Providers' bids or the designation of a selected Provider or a default Provider. The Moderator then transmits selected portions of this information to a control computer associated with each end user or group of end users (or each reseller or group of resellers), as well as to participating Providers' energy network management centers. Each control computer gets the rate information and/or provider selection information from the Moderator that pertains to the end user or group of end users (or the reseller or group of resellers) with whom the control computer is associated. The Moderator gives each Provider

bid information from other Providers for at least a portion of the end users (or resellers) in regard to which any Provider has submitted a bid. A control computer may be operated by the Moderator, by an end user or reseller associated with a control computer (e.g., by the energy manager of a large industrial customer), or by the local energy distribution company that distributes energy to the end user associated with a control computer. For some end users, the Moderator will perform the functions of the control computer, perhaps using an adjunct computer to the Moderator. From the list of all Providers providing bid information to the Moderator, each control computer (or the Moderator) can select those Providers from whom participating end users or resellers will be provided electric power or natural gas and can change that selection at any time. After each new bid is submitted by a Provider and is processed by the Moderator, the rate and/or provider selection data will be transmitted to the relevant control computers (or retained by the Moderator if the Moderator will perform the functions of the control computer, including selecting a Provider for each set of end users or resellers) and rate information will be distributed to some or all of the Providers in order to implement the auction. A Provider, for example, may not be interested in receiving the bids of other Providers who are not active in the same geographic regions. All Providers will have the opportunity thereafter to submit a lower or higher bid for any end user (or any reseller or group of resellers) or group of end users to whom they wish to supply electric power or natural gas. The Moderator (or the control computer associated with a set of end users or resellers) collects end users' actual usage data from end users' meters and processes this data to create periodic usage reports to be transmitted to Providers. If meter readings are performed by the end user's DISCO or a third-party meter reading service entity rather than the Moderator, reports of such end user's actual energy usage can be collected by the DISCO or third-party service entity and transmitted to the Moderator for processing and subsequent transmission by the Moderator to the respective Provider. The Provider, as part of managing its available capacity, can adjust its bids, for example, to create more demand for its available capacity on a spot basis, resulting in incremental revenue for the Provider that would not be achievable otherwise. These periodic usage reports can also be transmitted by the Moderator or associated control computer to the applicable end users or resellers. Each Provider of electric power manages its power generation and/or power provisioning activities (e.g., buying and selling power in the wholesale markets) in response to periodic reports of end users' actual usage transmitted by the Moderator (or applicable control computer) to the selected Provider. In response to such reports, this Provider can adjust its power generating or provisioning capacity to reflect higher or lower expected usage as these periodic reports are received throughout the day, month or year. Each selected Provider of natural gas manages its gas production and/or gas provisioning activities (e.g., buying and selling natural gas in the wholesale markets) in response to similar periodic reports of end users' actual usage transmitted by the Moderator (or applicable control computer) to such Provider. The technology required to facilitate forward delivery transactions, in which a buyer and seller agree to the terms of a transaction today, for example, but schedule actual delivery for a future time, would be helpful to end users, resellers and Providers. The Moderator can facilitate such transactions by processing

requests for end users or resellers (as buyers) for future energy supply or services to be delivered by Providers in the future. In order to provide the Moderator with sufficient information to process such a request, the buyer will enter the information describing the request on a software-derived template and transmit such information to the Moderator. Through this bidding process, Providers can compete to supply electric power or natural gas to end users and resellers based on available capacity, delivery destinations, volume discounts, peak period requirements, etc. Providers can also manage their power generation, gas production and/or energy provisioning activities by adjusting their bids from time to time, depending on capacity utilization or other energy availability factors. And end users (and resellers) can easily make economic choices among competing Providers.

Brief Description of Drawings

[0004] Figure 1 is a schematic view of an exemplary system of the invention showing shared data links between the Providers and the Moderator, between the Moderator and the control computers, between the control computer and the end users (or resellers), between the Moderator and the DISCOs, between the Moderator's adjunct computer and the control computers, between the Moderator's adjunct computer and the DISCOs, and between the Moderator's adjunct computer and the Providers, and further showing dedicated communication lines between the Moderator and its adjunct computer, and the use of the public switched telephone network for communications between the Moderator's adjunct computer and end user meters.

[0005] Figure 2 is a schematic view of an exemplary system of the invention showing dedicated communication lines between the Provider and the Moderator and between the Moderator and the control computers, and a shared data link between the Moderator and the DISCOs.

[0006] Figure 3 is a schematic view of an exemplary system of the invention showing shared data links between the Provider and the Moderator, between the Moderator and the control computers, and between the Moderator and the DISCOs.

[0007] Figure 4 is a schematic representation of an exemplary method of the invention showing transmission of bids by Providers to the Moderator, processing of bids by the Moderator and transmission of Provider selection data to the control computers, selection of Providers by the respective control computers and transmission of selection notifications to the Moderator, and transmission of such notifications by the Moderator to the selected Providers and the applicable DISCOs.

[0008] Figure 5 is a schematic view of an exemplary system of the invention in which the control computers transmit selection notifications directly to the selected Providers.

[0009] Figure 6 is a schematic representation of an exemplary method of the invention in which the control computers select Providers and transmit notifications to the Moderator, the selected Providers and the applicable DISCO.

[0010] Figure 7 is a schematic view of an exemplary system of the invention in which the Moderator selects Providers and incorporates all functions otherwise performed by the respective control computers as shown in Figure 4.

[0011] Figure 8 is a schematic view of an exemplary system of the invention in which the Moderator selects Providers for each set of end users and communicates with all of the Providers and the DISCOs via dedicated communication lines.

[0012] Figure 9 is a schematic view of an exemplary system of the invention in which the Moderator selects Providers for each set of end users and communicates with all of the Providers and the DISCOs via shared data links.

[0013] Figure 10 is a schematic representation of an exemplary method of the invention in which the Moderator selects Providers for each set of end users and notifies the respective Providers and applicable DISCOs.

[0014] Figure 11 is a schematic view of an exemplary system of the invention showing the use of the Internet for communications between the Moderator's adjunct computer and end user meters.

[0015] Figure 12 is a schematic view of an exemplary system of the invention showing the use of a wireless communications network for communications between the Moderator's adjunct computer and end user meters.

[0016] Figure 13 is a schematic view of an exemplary system of the invention showing the applicable DISCO for each set of end users collecting the meter reading data from the meters of end users participating in the auction service and transmitting such meter reading data to the Moderator's adjunct computer.

[0017] Figure 14 is a schematic view of an exemplary system of the invention showing third party meter reading service entities (independent of the applicable DISCOs) collecting the meter reading data from the meters of end users participating in the auction service and transmitting such meter reading data to the Moderator's adjunct computer.

[0018] Figure 15 is a schematic representation of an exemplary method of the invention, including a billing capability in which the Moderator can generate a bill for each end user.

[0019] Figure 16 is a schematic representation of an exemplary method of the invention, including a billing capability in which the applicable DISCO can generate a bill for each end user.

Detailed Description

[0020] The Energy Auction System (EAS) can be made available to all end users of electric power or natural gas (and resellers of either), but will function best for those end users who have meters that can be read remotely by electronic means known in the industry (e.g., with access via public or private wired or wireless telecommunications facilities, coaxial cable facilities, power line communications access, etc., whether using circuit-switched, packet data, frame relay or asynchronous transfer mode networks or other communications facilities utilizing known technologies). An exemplary embodiment of the EAS system architecture is designed to operate as follows: (i) Providers transmit their most economically advantageous rates (or other economic incentives) as bids to the Moderator; (ii) the Moderator processes these bids according to specified rules of the auction to which all bidders agree, in order to produce an

apples-to-apples comparison of the rates or other economic incentives offered by the bidders and, further, to generate provider selection data pertaining to each end user or group of end users (or each reseller or group of resellers) associated with a particular control computer; (iii) the Moderator transmits back to the bidders some or all of the bids received from the other bidding Providers, giving them an opportunity to adjust some or all of their bids; (iv) the Moderator transmits to each control computer such rate information and/or provider selection data as is relevant to the end user or group of end users (or resellers) associated with that control computer; (v) using the information received from the Moderator, each control computer selects the Provider offering the lowest rate (or best economic value) at that time to the end users (or resellers) associated with that control computer (after applying any decision rules formulated and inputted by the control computer's administrator and/or formulated and transmitted to the applicable control computer by any end user or reseller) and transmits such selection to the Moderator; (vi) for those end users or resellers not associated with a control computer, the Moderator will perform all of the functions the control computer would otherwise perform, including selecting the Provider offering the lowest rate (or best economic value) at that time to each such end user; (vii) the Moderator (or applicable control computer) transmits a notification to the selected Provider (which may also specify the estimated energy requirements of the set of end users to be served) and, perhaps, copies of such notification to the end user's local energy distribution company (DISCO) and to the respective Provider supplying power or natural gas to this end user immediately prior to the start of energy deliveries by the newly-selected Provider; (viii) meters at subscribing end user sites periodically transmit reports of actual energy usage to the Moderator (or an associated adjunct computer), either directly or through the end user's DISCO or a third-party meter reading service entity; (ix) the Moderator (or an associated adjunct computer) processes this meter reading data and transmits to the respective Provider (and, perhaps, also to the applicable end users or resellers) periodic reports of the actual energy used by each end user or selected group of end users (or by customers of a reseller) being supplied by that Provider; (x) these usage reports may also be processed and transmitted by the Moderator to the DISCO (or an adjunct computer associated with the DISCO's power grid or gas pipeline management and/or billing systems) for each end user or group of end users (or resellers) in the service area being supplied by a specific Provider or for all end users (or resellers) in the aggregate (or any portion thereof) in that DISCO's service area, without necessarily sorting such end users (or by customers of a reseller) by their respective Providers; (xi) based on such usage reports from the Moderator, each Provider can adjust the quantity of electric power or natural gas it supplies, by generation/production or otherwise, to the power grid or gas pipeline network, respectively, of the DISCO serving such end user or selected group of end users (or resellers); (xii) applying the actual energy usage data received from each end user's meter and the rate (or other economic incentive) offered at the time by the winning bidder from among the participating Providers, the Moderator (or an associated adjunct computer) can prepare and transmit a billing statement for each end user or reseller to the respective Provider and to such end user or reseller (unless the Provider wishes to prepare its own billing

statement for such end user); and (xiii) for those end users or resellers who so elect (assuming their selected Providers agree), the Moderator can prepare and transmit to each end user or reseller a consolidated billing statement, based on the actual energy usage data received by the Moderator from that end user's meter (or the meters of end users served by that reseller) during an entire billing cycle and the winning bid data relating to all selected Providers who supplied electric power or natural gas to this end user or reseller during that billing cycle (i.e., consolidating billable charges from all Providers of electric power to such end user or reseller on one bill and consolidating billable charges from all Providers of natural gas to such end user or reseller on another bill). The Moderator (or applicable control computer) will, in most cases, transmit or make available to Providers (e.g., via an on-line bulletin board or Internet website) the estimated energy requirements of the end user or group of end users (or the reseller or group of resellers) to be served before the Moderator (or control computer) makes a selection of the Provider offering the lowest rate (or best economic value) at that time to the applicable end users or resellers, in order to give the Providers more precise data on which to base their bids. Transmissions by Providers of bids to the Moderator, transmissions by the Moderator of processed bid data to relevant control computers and rate information to Providers, transmissions by control computers of Provider selection notifications to the Moderator, and transmissions by the Moderator of winning bid notifications to selected Providers (and, perhaps, to the relevant DISCO) can be made via data link, dedicated facility or any private or public wired or wireless telecommunications network. Similar means can be used for transmissions by end users' meters of usage data to the Moderator, for transmissions by the Moderator (or the applicable control computer) of the periodic energy usage reports derived from such meter reading data to the Providers, the end users (or resellers) and the applicable DISCOs, and for transmissions by the Moderator to the respective Provider of billing statements. The Moderator prepares for each end user or reseller. A control computer may be operated by the Moderator, by an end user or reseller associated with a control computer (e.g., by the energy manager of a large industrial customer), or by the DISCO that distributes energy to the end user associated with a control computer. End users can participate in EAS even if they do not have meters that can be remotely read by electronic means. Such end users can have their meters read by on-site visits at the end of a billing cycle (or more frequently, if necessary) and have the meter reading data transmitted to the Moderator immediately thereafter (in lieu of having a remotely-readable meter transmitting periodic energy usage reports to the Moderator). Time-of-use meters will enable EAS to accommodate many Providers for an end user during the same billing cycle (e.g., peak v. off-peak usage), but switching to any new Providers before the end of the billing cycle will not be feasible, absent an on-site visit to read the end user's meter before making such a switch. End users who have meters that do not record actual energy consumed by time of use, for example, may achieve a rough approximation of time-of-use metering if participating Providers agree to bill for usage based on usage profiling (also referred to as load profiling in the electric power industry) for that customer (i.e., estimating the end user's actual energy usage hour-by-hour, using historical usage levels related to the class of customers into which this end user

fits), an approach adopted by the California PUC as part of its electric power deregulation plans. Bidding The Moderator will establish rules and standards under which the auction process will be conducted. Some of those rules will be set to enable the Moderator to compare competing bids on an apples-to-apples basis, in order to determine the best economic value being offered to end users. Bids submitted to the Moderator must conform to such rules in order to be considered by the Moderator. The auction rules may take into account such factors as the difference in the nature of electric power generation and gas supply. For example, the supply of electric power must be controlled at the point of generation, while gas is capable of being stored, the transmission pipelines themselves constituting a significant storage medium. In general, the Moderator may require bidders to formulate bids based on, for example, (i) a particular period of time during which they will supply energy (e.g., the next hour or the next 12 months), (ii) a specific end user (or reseller) or a group or class of end users (or resellers) to whom they will supply energy, (iii) a stated class of service they will supply (e.g., uninterruptible v. interruptible, high-voltage v. stepped-down service, etc.), (iv) whether they will supply 100% of an end user's (or reseller's) energy needs during a specified period or only supply up to a specific quantity of energy during a set period, (v) a specific delivery destination (e.g., a grid or pipeline interface of the end user's DISCO at which the DISCO will accept delivery of power or natural gas, respectively, from outside suppliers), (vi) the estimated amount of the energy required on a recurring basis by each applicable end user or set of end users (or resellers), (vii) the frequency with which the bidder will receive periodic feedback reports from the Moderator of actual energy usage by the end users to whom the bidder wishes to supply energy - a function primarily of whether the end users have remotely-readable meters sending usage reports to the Moderator on a recurring basis; and (viii) whether the end user (or reseller) will be billed separately for each Provider's energy or on a consolidated basis for all Providers supplying energy to such end user (or reseller) during the same billing cycle. A Provider may wish to formulate and submit more than one bid for an end user or group of end users or resellers (e.g., some end users may require more than one class of service, others may require that electric power or natural gas be delivered to more than one location, etc.). The competing Providers bid for customers by transmitting to the Moderator the economic incentive each Provider will offer for supplying energy to different end users or groups of end users (or resellers). The economic incentive presently contemplated as being most usual is the rate (amount of money charged per unit of energy). However, many other kinds of economic incentive may be offered, such as a credit toward other services (e.g., frequent flyer points) or a credit toward an additional rebate that may be offered if a user's energy usage for a given period rises above a threshold. The economic incentive could be a combination of rate and another incentive. But the economic incentive should be selected from a limited set authorized by the Moderator, because the incentive must be capable of being evaluated by the software in the Moderator or its associated adjunct computer. Each bid is associated with a time period within which the bid will be effective. The rules of the bidding process related to such time periods can be structured in many ways. The following are examples of such possible bidding rules: (a) The day is divided into blocks of time by the Moderator and bids are

submitted for each block of time. All bids for a given block of time must be submitted prior to a cut-off time that precedes that block of time by a protection interval. Any bid received after the cut-off time is considered to be effective for the next block of time, unless a new bid is subsequently received from the same Provider that would be applicable to the same end user or group of end users (or resellers). The protection interval applicable to bids to supply electric power, for example, is needed to permit all of the following actions to take place prior to the bid starting time: (i) processing of the bid information by the Moderator and transmission to the relevant control computer; (ii) selection of the winning bidder by the appropriate control computer and transmission of that selection back to the Moderator; (iii) the subsequent transmission of a selection notification to the selected Provider (or its associated adjunct computer) and, perhaps, to the DISCO serving the applicable end user or group of end users; and (iv) the scheduling of the power to be delivered by the selected Provider with the power grid controller(s) between the point of the Provider's generating facility (or the point at which the Provider takes title to any purchased power to be delivered to the end user) and the grid interface of the end user's DISCO. For example, if one hour blocks of time are auctioned, a 30 to 60 minute protection interval may be appropriate. The protection interval applicable to bids to supply natural gas may be much longer due to the relatively slow speed at which natural gas can be transported (when compared to that for newly-generated electric power). (b) Providers are permitted to submit bids for any time interval by specifying a start time and a termination time. However, no bid can be effective before a protection time interval specified by the bidding service provider. The Moderator provides confirmation of received bids back to the Provider if the data link from the Moderator to the Providers is provided with a selective messaging capability. (c) Providers may be permitted to enter default bids for any block of time for which they transmit no other bid. (d) As a fail-safe mechanism, to avoid use of old bids that have not been changed due to communication failure, the Moderator may impose a rule setting a time limit (a fail-safe protection time) to the applicability of any bid. At the expiration of the time limit, the expired bid could default to a preset default bid or to no bid. Such a rule could also be built into a Provider's adjunct computer to protect against a failure in the Moderator-to-Provider data link. In formulating a bid, a Provider will typically need to know the location of the end user's facility to which energy will ultimately be delivered. More particularly, in most cases a Provider must know in which DISCO's service area the end user's facility is located and, perhaps, in which specific section of the DISCO's service area that facility is situated. Under most electric power deregulation efforts to date, for example, a Provider will be required to pay open access transmission fees to transport its power from its point of generation (or the point at which the Provider took title to the power, if it was purchased in the wholesale market) to the interface at which the end user's DISCO accepts power from outside suppliers. For the last leg of the transmission path, from the DISCO's outside interface to the specific section of the DISCO's power grid within which the end user is located, the provider will generally be required to pay a retail wheeling fee to the DISCO. This fee may vary depending on which specific section of the DISCO's power grid is the destination for the power to be delivered by the Provider. All of these trans-

mission and wheeling charges would be expected to be incorporated in any bid submitted by a Provider to the Moderator. For end users with facilities at more than one location (and, perhaps, situated in different DISCOs' service areas), the Moderator can accommodate the submission of composite bids by Providers, formulated by the bidders to cover some or all of such locations. To give bidders more precise data on which to base their bids, the Moderator can provide bidders with historical usage profile information for participating end users or groups of end users. The Moderator can update such historical information on a continuing basis to assure bidders they have current and reliable data. An end user who is a new subscriber to EAS may be required to furnish the Moderator with at least 30 days and as much as 24 months of historical usage data before the Moderator permits that end user to participate in the auction. Depending on the transmission and computer technologies used, transmissions by the Moderator (or the applicable control computer) to the Providers could also be accomplished by, for example, posting the historical usage profile information on an Internet website, bulletin board system or other similar facility, making them available for retrieval by all Providers. The transmission of bidding data from the Moderator to each of the Providers is essential for the auction to function most effectively. This feedback permits the Providers to adjust their own bids for any particular end user or group of end users in view of other Providers' bids for that same end user or group. In a block of time bidding scheme, this transmission may take place, in different service offerings, either before or after the bid cutoff time for a given block of time. If transmitted before the cutoff time, the Providers have an opportunity, up to the cutoff time, to adjust their bids for that block of time. If the service is arranged for transmission of such data back to the Providers after the cutoff time, the Providers can adjust their bids for the next or subsequent blocks of time. If the bids are transmitted back to the Providers after the cutoff time but before the bid's effective time, the Providers would be able to manage their power generation, gas production and/or energy provisioning activities to take account of that time interval's bid structure. The bids can be adjusted to be higher or lower, depending on whether the Provider wishes to further encourage or discourage additional energy delivery commitments. The Provider may wish to reduce its bid, for example, to stimulate additional delivery commitments or increase its bid to discourage additional commitments. Depending on the transmission and computer technologies used, transmissions by the Moderator (or the applicable control computer) to the Providers could also be accomplished, for example, by posting the bids on an Internet website, bulletin board system or other similar facility, making them available for retrieval by all Providers. Depending on the particular implementation of the auction, it may be appropriate to transmit all received bids to all Providers. However, each Provider's own bids need not always be transmitted back to it and there may be Providers who focus, for example, on certain delivery destinations or certain classes of end users (or resellers) and are not interested in seeing bids from Providers serving other delivery destinations or end users (or resellers). In any event, at least a portion of the bids are transmitted to at least a portion of the Providers in order to implement an auction. The bid information being transmitted between the Moderator and the Providers is sensitive business information and may need, under various circumstances, to be encrypted.

Depending on how the service is arranged, there may be a need to protect the privacy of bids from interception by other participating Providers or from interception by non-participating Providers. Some of the most sensitive information would be bid information sent from the Providers to the Moderator and bid confirmation messages from the Moderator to the Providers. Some less sensitive information would be the bids transmitted back to participating Providers after the cutoff time for a given block of time. There are several encryption schemes known in the art for such use, including the RSA and PGP schemes. To reduce the exposure of end users to the potential volatility of prices offered via the auction, EAS will allow default Providers to participate. If, for example, prices bid in the auction rise above a fixed upset price previously agreed to by the default Provider, the relevant control computer (or the Moderator) will select the default Provider as the winning bidder. The Moderator may negotiate with one or more Providers to serve as default Providers for EAS. In the alternative, an end user or group of end users (or a reseller) may wish to specify to the Moderator that a particular Provider be designated as that end user's or reseller's default Provider (e.g., a Provider who has entered into a contract with the end user to supply a significant portion of that end user's electric power or natural gas needs outside of the auction process). The Moderator can accommodate end users (and resellers) who wish to limit the group of Providers from whom the Moderator will evaluate bids when a Provider is to be selected to supply energy to such end users (or customers of such resellers). An end user (or reseller) may wish to instruct the Moderator (or the administrator of the control computer associated with such end user) that energy be supplied to that end user only by Providers specified by that end user (or reseller). The Moderator, in compliance with this instruction, would include the bids of only this set of specified Providers when generating provider selection data in regard to such end users. In the alternative, this instruction by the end user can also be implemented at the control computer associated with that end user. EAS can also accommodate those end users or resellers who wish to employ a strategy of purchasing power or natural gas at the lower of the bid price in the auction or the price they agreed to pay a contract Provider under a term contract. This contract price would be transmitted by the end user or reseller to the Moderator (or the applicable control computer) and the Moderator (or control computer) would include this contract price among the bids it evaluates when generating provider selection data in regard to each such end user or reseller. If the contract price is lower than all of the other bids, the relevant control computer (or the Moderator) would select the contract Provider as the Provider of choice for that end user or reseller. If the contract price is higher than any of the other bids, the low bidder would be selected as the winning Provider. The contract price serves as a ceiling while the end user or reseller can still capture the benefit of low prices made available via the auction (e.g., at night when system-wide demands for power are lower than during peak daytime periods). To ensure that this end user or reseller can satisfy the volume commitments that would likely be part of any attractively-priced contract, the Moderator could enable this end user or reseller to designate from time to time (e.g., during certain peak demand daytime hours) that the contract price is to be treated as the low bid available to that end user or reseller at that time. At other times the Moderator will consider all bids submitted by

other Providers as well as the contract price. Most bidders participating in the auction would be expected to supply 100% of the electric power or natural gas needed by the end users for whom these bidders are selected as the current Provider. Some bidders, however, may wish to submit bids to supply a fixed quantity of power or natural gas to an end user or group of end users (or resellers) during a particular period of time, rather than commit to supply 100% of the power or natural gas this end user needs or actually consumes. The Moderator can accommodate this type of bid by prescribing standard units or blocks of power or natural gas that Providers can use when formulating such bids. The Moderator would consider such bids only for end users (or resellers) who wish to participate and only as part of an auction process in which the bids compared are those for identical units or blocks of power or natural gas. In the event that insufficient units or blocks of energy are offered, the Moderator could again rely on a default Provider, either for 100% of the end user's or reseller's energy requirements or only for the shortfall needed. An end user or reseller could, under this approach, have more than one Provider delivering power or natural gas to its facilities (or those of a reseller's customers) during the same period of time. For example, a large end user with a need for 1000 kilowatts of power during every hour between 8:00 a.m. and 6:00 p.m., Monday through Friday, elects to participate in EPAS under the above unit or power block approach. Four Providers submit bids to supply (in order of the lowest-priced bids first) 600, 200, 200 and 500 kilowatts of power for the period between 9:00 a.m. and 10:00 a.m. each day. The relevant control computer (or the Moderator) selects the three Providers who bid 600, 200 and 200, respectively, on the basis of their low bids and the amount of power offered. In another example of the auction using units or blocks of power or natural gas, the auction rules might specify that only one Provider (and, perhaps, a default Provider to cover any shortfall) will be selected for each end user or reseller from among those bidding to supply blocks of power. In that event, in order to make its selection of a Provider for each end user or reseller, the control computer (or the Moderator) would only consider bids to supply blocks of power or natural gas of sufficient size to fulfill 100% of the end user's or reseller's projected power or natural gas requirements or, at the election of the end user or reseller, some lesser quantity of power or natural gas previously specified by the end user or reseller, with the shortfall to be covered by the default Provider. Under a block bidding approach, the end user or reseller would likely be committed to a take-or-pay obligation with each of the partial Providers, including the default Provider covering any shortfall. Because electric power is fungible, as is natural gas, the end user's meter would not be able to distinguish whether the electric power or natural gas supplied by one Provider was consumed in its entirety while another Provider's supply was not. This unit or block approach would probably be practical only for those large users or resellers who can control with some precision how much power or natural gas they (or their end user customers, if a reseller) consume at any time or have highly predictable usage profiles on a recurring basis. If a Provider is selected as the winning bidder, the Provider will be responsible to schedule the delivery of its power or natural gas to the end user's DISCO during the period stipulated. For example, such a selected Provider of electric power will notify the regional grid controllers of the utility grids between the

provider's point of generation, and the grid interface of the end user's DISCO that the Provider intends to ship power over their power grids. The Provider will likely aggregate the quantity of power it needs to deliver to each DISCO for the Provider's end users in that DISCO's service area and arrange for its delivery as part of the same scheduling activity. Resellers, traders and brokers are constantly engaged today in scheduling power and natural gas deliveries as part of their routine daily activities in the wholesale electric power market. Monitoring Usage - Feedback to Providers Once the Provider has been selected, the Moderator (or applicable control computer) can monitor the actual energy consumed by each end user by collecting meter readings from the meter or meters at the end user's facilities. Most meters with remote reading capability today can transmit usage reports to the Moderator every 15 minutes, if necessary. Industry experts expect meters to be available soon that will enable almost continuous (i.e., near real time) reporting of energy consumption. Depending on the type of end user or reseller and the needs of the Provider (and, perhaps, the end user's DISCO), the frequency at which actual usage reports should be fed back to the selected Provider or DISCO will vary. For example, very large users of electric power can create temporary imbalances in the local power grid and contribute to meaningful fluctuations in the aggregate amount of power required to be supplied by a selected Provider to meet the needs of all of its customers in a particular service area. The DISCO for that end user will also want to obtain timely usage information in order to manage such imbalances on its local grid effectively. Frequent meter readings would be desirable for this type of customer. On the other hand, residential customers as a group have fairly predictable usage profile patterns and would require much less frequent monitoring. The Moderator will process and transmit such actual usage reports at such frequencies as are specified in the auction rules, with reasonable exceptions accommodated at the request of the selected Provider or DISCO. In addition, to facilitate such end user's or reseller's energy management efforts, the Moderator (or applicable control computer) can also transmit actual energy usage data (with or without current information on bid prices) on a periodic basis back to the end user or reseller (to be received by the end user's meter or such other terminal equipment as the end user or reseller may designate) or, in the alternative, the Moderator (or applicable control computer) can transmit such data to an electronic mail address or Internet website designated by the end user or reseller. When meter readings are received by the Moderator or applicable control computer, as the case may be, it will process the actual energy usage data collected, first sorting it by end user (and, if appropriate, by reseller) and then, perhaps, aggregating this data by Provider for each delivery destination this Provider serves. A delivery destination for power may be the grid interface at which the end user's DISCO accepts power from outside suppliers or the section of the power grid within the DISCO's service area in which the end user is located or at the grid interface designated by the reseller, if applicable. A delivery destination for natural gas may be the interface on its regional pipeline network at which it accepts natural gas from outside suppliers. The Moderator can then transmit to each Provider the applicable aggregated usage data (as well as usage data on individual end users or groups of end users or resellers) if the Provider so elects. Relying on this energy usage data,

the Provider can determine whether to increase or decrease the aggregate amount of power or natural gas it delivers to each delivery destination. The more frequent the energy usage feedback from the Moderator, the more efficient the Provider can become, eventually optimizing its generating or production capacity and/or energy provisioning activities (i.e., its buying and selling of power or natural gas in the wholesale markets). For those end users without remotely-readable meters, the Moderator will be unable to collect periodic reports of actual energy usage more often than once a month, typically, unless more frequent on-site visits are scheduled than is generally the practice in the industry today. Feedback from these reports, once they are processed by the Moderator, will be transmitted to the applicable Provider on the same monthly basis. As a result, Providers will be more limited in their ability to react in response to such feedback by adjusting the quantity of electric power or natural gas they supply at any time to the power grid or gas pipeline network, respectively, of the end user's DISCO. Providers will have fewer opportunities to make optional and efficient use of their generating or production capacity and/or energy provisioning activities. In contrast, if these end users were to install remotely-readable meters, the Moderator could collect meter readings once an hour (or more frequently, if desired) and feed back the processed data to the respective Provider shortly after receiving it, permitting Providers to make frequent adjustments in the amount of power or natural gas supplied, optimizing their capacity and provisioning activities on a continuing basis. End users with such remotely-readable meters should be more attractive customers for Providers and, as a result, realize economic benefits not offered to other end users. As deregulation progresses, state PUCs will determine whether any DISCOs will retain their monopoly over meter reading. The California PUC has already indicated that electric power DISCOs in that state will lose their exclusive right to read end user's meters. It appears increasingly likely that most state PUCs will reach a similar conclusion in order to give new Providers a reasonable chance to compete with the incumbent utility (since, in most states, each DISCO will be affiliated with its own power generating entity as a direct competitor to other Providers). However, in those states in which DISCOs retain their meter-reading monopoly, the Moderator may arrange with the DISCO for periodic transmissions to the Moderator of actual energy usage data collected from the meter of each end user subscribing to EAS. In a similar fashion, in those states where the PUC will permit third-party meter reading service entities (independent of the DISCO or any of the Providers) to read end users' meters, the Moderator may arrange with this third-party service to obtain actual energy usage data for each EAS subscriber. In the alternative, the applicable DISCO or third-party meter reading service entity may transmit these periodic usage reports directly to the applicable Providers with copies, perhaps, transmitted to the Moderator. In those jurisdictions where the DISCO does not read the meters of EAS subscribers, the Moderator can provide the DISCO with meaningful usage data feedback to enable the DISCO to manage its local power grid or gas pipeline network efficiently. The Moderator can process the meter reading data it receives from other sources (e.g., remotely-readable meters transmitting energy usage data directly to the Moderator or the applicable control computer or third-party meter reading services transmitting the results of their readings to the Moderator's adjunct computer) and

transmit to the DISCO periodic reports of actual energy usage by each end user or group of end users (or resellers) in the DISCO's service area, sorted by their respective Providers. The Moderator may also transmit to the DISCO such energy usage data for all end users and/or resellers in the aggregate (or any portion thereof) in that DISCO's service area, without sorting such end users or resellers by their respective Providers. Billing under this disclosed invention could be handled, for example, by one of three methods: (i) by the Moderator applying the historical bid data to the energy used by each end user or group of end users served by a reseller, as recorded by the meter of such end user, without necessarily requiring the participation of the end user's DISCO in the billing process, (ii) by the DISCO reporting the energy usage data of each end user to the Moderator (if the DISCO performs meter readings for end users who are EAS subscribers or customers of a reseller participating in EAS), and the Moderator then creating a bill by applying the appropriate bid rates to the quantities of energy used while those bids applied, sorted by the selected Providers, or (iii) by the Moderator supplying historical bid data to the DISCO's billing computer for the period coinciding with the end user's or reseller's billing cycle, and the DISCO's billing computer then creating a bill by applying the appropriate bid rates to the quantities of energy used while those bids applied, sorted by the selected Providers. A third-party meter reading service entity instead of the DISCO could collect energy usage data and transmit that usage data to the Moderator for the Moderator to create a bill for each end user or reseller. In the alternative, the third-party meter reading service could use the energy usage data it collects, together with the Moderator's historical bid data, to create such a bill. Under one such method, the Moderator (or applicable control computer) will receive actual energy usage reports from each end user's meter on a periodic basis, as part of the Moderator's role as an intermediary between end users (or resellers) and Providers (and, perhaps to some extent, between end users and their local DISCO). These meter reading reports will provide the Moderator with the quantity of electric power or natural gas actually consumed by the end user during each period measured and recorded by the meter. Periods as short as 15 minutes (and even shorter in the future) can be measured by meters with time-of-use features. Such meters will enable the Moderator to determine the precise amount of power or natural gas supplied to an end user by each of many Providers during the same billing cycle. For end users without time-of-use meters today (i.e., many small businesses and most residential customers), the Moderator can employ usage profiling to estimate actual energy usage from period to period (e.g., hourly). Bid information submitted by participating Providers to the Moderator in the course of the auction will be stored for a period of time by the Moderator in its database (or that of an associated adjunct computer). The Moderator will also record and store in its database the identity of the Provider(s) selected to supply power or natural gas to each end user or group of end users during any billing cycle. With the relevant bid price of the selected Provider and the actual energy usage data for the period this Provider supplied power or natural gas to an end user (or to customers served by a reseller), the Moderator can prepare a billing statement for that end user (or reseller) and each of its Providers during a billing cycle. Interim statements, covering any period within the billing cycle, can also be prepared by the Mod-

erator. Billing statements, whether for the entire billing cycle or any interim periods, can be transmitted by the Moderator to the end user (or reseller) or the applicable Provider (or an adjunct computer associated with the Provider's billing system). Some Providers may wish to prepare and deliver their own billing statement for each end user or reseller, assuming the end user or reseller is willing to bear the inconvenience of multiple bills for electric power, for example, covering the same monthly billing cycle (i.e., if more than one Provider supplies power to this end user or reseller during that month). Using the energy usage data collected by the Moderator (or DISCO) for each end user (or group of end users served by a reseller) and transmitted periodically to the Provider, that Provider could apply its appropriate bid rate to such actual usage in order to render a bill for each such end user or reseller. As an alternative that most end users or resellers would likely find more palatable, the Moderator can install data links or electronic interfaces between such Providers' billing systems and the Moderator's billing computer, enabling each Provider to transmit billing information it prepared for each end user or reseller to the Moderator. After receiving such billing data from each Provider, the Moderator's billing computer can collate the Providers' data into a single integrated bill for the end user or reseller. The end user's DISCO may continue basing its tariffed service charges to end users on the total quantity of power or natural gas consumed during the billing cycle and, for larger customers, the peak demand for power or natural gas from each customer. If the Moderator or applicable control computer (instead of the DISCO) is collecting actual usage data from end users' meters, the Moderator can transmit regular reports to the DISCO showing actual energy usage for any period measured by each end user's meter, including both the total energy consumed during the billing cycle (or such other period requested by the DISCO) and the peak demand for power or natural gas from the end user, on an average or absolute basis. Under most states' deregulation plans, as described above, PUCs are expected to give Providers the right to read meters directly and not be required to depend on the local DISCO to perform this function. In addition, some states are expected to permit independent firms to provide meter reading and billing services to Providers, end users and DISCOs. The Moderator could collect actual energy usage reports from such third-party service entities and prepare billing statements for each end user or reseller and each of the selected Providers supplying power or natural gas to that end user (or the group of end users served by that reseller) during a billing cycle. Interim statements could also be prepared by the Moderator. In either case, the Moderator could transmit such billing statements to Providers, the end user or reseller and, if necessary, the end user's DISCO. In any jurisdiction where the PUC or other regulatory authority permits the DISCO to retain the exclusive right to read end users' meters, the Moderator will arrange to receive the relevant meter reading data from the DISCO. To produce a billing statement for each end user and the applicable Provider, the Moderator can process the usage data received from the DISCO and match it up with the selected Providers' appropriate bid data stored in the Moderator's database. Again, the Moderator can transmit billing statements to the end user or reseller and each of the selected Providers. Such statements can cover the entire billing cycle or any interim period. For the convenience of end users or resellers, the Moderator can

prepare a billing statement that consolidates all of the end user's electric power or natural gas consumption (or, if for a reseller, covering all of the end users served by that reseller) for the billing cycle and all of the charges levied during that period by all of the selected Providers for that end user or reseller (i.e., with one bill for electric power and another for natural gas). Each Provider would receive from the Moderator only the portion of this billing statement that related to the power or natural gas supplied by that Provider. To facilitate the entry of an end user or reseller (in either case a Buyer) into a forward delivery transaction with a Provider (or a reseller of another Provider's energy supplies or services), the Moderator will accommodate requests for future energy supply or services (an RFS) from a Buyer. A forward delivery transaction is a purchase transaction in which a Buyer and a Provider (or a reseller of another Provider's energy supplies or services) agree on all material terms of the transaction at the time that transaction is entered into, but delivery by the Provider of the energy supply or service purchased by the Buyer is scheduled for a future time. That future delivery may be set for any specific delivery time in the future (for example, seconds, minutes, hours, days, weeks, months or years, or any combination thereof, after the time the transaction was entered into by the parties). In the context of this application, delivery means the Provider has made available to the Buyer, either via a direct or indirect transmission by the Provider to an appropriate interface with the local energy grid or pipeline servicing the premises equipment of the Buyer (or, if the Buyer is a reseller, to the designated interface with the grid or pipeline serving the reseller's end user customers) or some other interface specified by the Buyer, such purchase having occurred at the time the terms of the transaction (under which delivery is being made) were agreed to by the Buyer and the Provider. Figures 1 and 7 illustrate exemplary systems for carrying out the herein disclosed forward delivery transaction process. A Buyer formulates an RFS and the Buyer's computer 85,86 transmits this RFS to the control computer 8 associated with this Buyer over a data link or other telecommunications facility 87, and from the control computer to the Moderator 1 over data link 7, as illustrated in Figure 1. The Buyer's computer 85,86 can, in the alternative as illustrated in Figure 7, transmit the RFS directly to the Moderator via data link 88 and the Moderator can incorporate any or all of the functions of the control computer. In order to provide the control computer and/or the Moderator with sufficient information to process the RFS, the Buyer enters the information describing the RFS on a software-derived template including, for example, the delivery destination of the energy to be supplied. This template may reside, for example, on a computer bulletin board or website maintained by the Moderator (or the applicable control computer) and accessible to Buyer. The software-derived template may call for such things as: (i) the relevant future period for which service is being requested (e.g., one or more specific hours, days, weeks or months, or any combination thereof), (ii) the quantity of energy required (e.g., kilowatt hours, megawatt hours, cubic feet, etc.), (iii) any minimum quality criteria, (iv) the Buyer's load profile, perhaps with historical energy usage information, and/or (v) any other elements necessary to provide prospective Providers with a precise description of the future energy supplies or services the Buyer is requesting and the specific delivery criteria required by the Buyer. In many

cases, the Buyer may wish to include in the RFS the maximum price it is willing to pay a Provider for the energy supply or service requested (e.g., per kilowatt hour or megawatt hour of electricity or per cubic foot of gas, etc.). If the Buyer so specifies, the applicable control computer or the Moderator could use this maximum price as part of the selection process without necessarily disclosing it to prospective Providers. If no Providers submit RFS responses with prices at or below the Buyer's maximum price, the control computer or the Moderator could discard all of the responses and let the Buyer decide whether it will increase the maximum price and resubmit the RFS, it will abandon the RFS process altogether, or it will wait and resubmit the RFS again later with its previous maximum price. The Buyer could also be given the opportunity by the control computer or the Moderator to accept a price higher than the maximum price set by the Buyer as part of the RFS. At any time prior to the Buyer's transmission of its RFS to the applicable control computer or the Moderator (or as part of such transmission) and/or the processing of the RFS by the control computer or the Moderator, the Buyer may transmit to the control computer or the Moderator a set of decision rules applicable to any particular RFS (or group of RFS's) or to every RFS submitted by the Buyer to be applied by the control computer or the Moderator as part of the Provider selection process. For example, if the Buyer wishes to limit the group of Providers from whom it is willing to purchase energy, the Buyer can communicate that preference to the Moderator, either as part of the RFS transmission or as part of a previous transmission to the Moderator. In this event the Moderator will make the RFS information available only to that group of Providers preferred by the Buyer. Responses to the RFS from other Providers, if any are inadvertently received, will be discarded by the Moderator. Once the applicable control computer or the Moderator receives the Buyer's RFS, the control computer or the Moderator further processes the information submitted and converts the RFS into a format that the Moderator can transmit to prospective Providers' computers or post on a computer bulletin board or website accessible by prospective Providers. This distribution or posting may occur immediately after the RFS has been received and processed by the control computer or the Moderator, or at some later time (e.g., according to a designated schedule each day). In most cases, we would expect that the Moderator would not reveal the identity of the Buyer to the prospective Providers while the RFS is pending. Those prospective Providers wishing to respond to the RFS will each formulate its response, enter it (for example) on a software-derived template (which could reside in one embodiment on a computer bulletin board or website maintained by Moderator and accessible by the Provider) and transmit it to the Moderator via data link or other shared or dedicated telecommunications facility. Each Provider may be given the opportunity to limit the list of Buyers to whom the Provider is willing to sell energy supplies or services, and/or limit the energy supplies or services the Provider is willing to make available to any particular Buyer within one or more billing cycles (e.g., to reduce the Provider's credit exposure to that Buyer). The Moderator and/or each control computer can maintain each Provider's list of approved Buyers, with or without applicable credit or capacity limits. Updates can be transmitted by each Provider to the Moderator at periodic intervals. If, for any reason, the Buyer's identity is revealed in the RFS

information disclosed to prospective Providers, each Provider can elect whether to respond to the RFS. If a Provider were to respond to that RFS, any previous credit or capacity limitations imposed by that Provider on that Buyer might be deemed set aside, at least for that RFS-related transaction. The Moderator (or the applicable control computer) could also compare a Buyer's RFS information to data submitted to the Moderator by a prospective Provider before this RFS was distributed or posted, assuming the Provider had indicated, for example, its available energy supply and the price at which it would sell energy to any pre-approved Buyer. If such a Provider's available energy supply and pricing matched the requirements of a Buyer as specified in the Buyer's RFS, the Moderator (or control computer) could include this Provider as one of the respondents to the RFS, notwithstanding the fact that the Provider did not respond to the RFS after it was distributed or posted. As an alternative at some time in the future, if and when Providers become more comfortable posting data on their available energy supplies or services with the Moderator before an RFS is posted, the Moderator (or control computer) could use these pre-RFS submissions by Providers as the primary or exclusive source of responses to the RFS. When the Moderator distributes or posts an RFS, prospective Providers will typically be given a deadline or cut-off time by which they must respond to the Moderator. Any responses received by the Moderator after the cut-off time will likely be discarded. From among the responses received on a timely basis, the applicable control computer or the Moderator selects the Provider offering the best economic value to the Buyer, after applying the Buyer's decision rules, if any, and any additional determination criteria governing like transactions and known beforehand by both Buyers and Providers (e.g., historical performance by each Provider, sufficiency of energy supplied by each Provider to the DISCO serving Buyers in that region, etc.). To provide Buyers with the assurance that at least one Provider will be available to supply them with energy at a reasonable price, the control computer administrator or the Moderator may arrange for a default Provider from whom energy can be obtained under any of several scenarios (for example, if the prices offered by bidding Providers rise above a ceiling price specified by the Buyer). The Buyer can also provide the applicable control computer or the Moderator with a decision rule that directs the control computer or the Moderator to select a particular Provider, regardless of how many other Providers respond to the Buyer's RFS or the attractiveness of the economic incentives they offer. This approach enables the Buyer to purchase its energy needs, for example, from a specific Provider with whom the Buyer may have an existing contract relationship pursuant to which the Buyer is committed to purchase from that Provider a certain volume or proportion of its energy needs. This decision rule may be operative based on one or more criteria, for example, time of day, quality criteria, destination, etc. In some cases, the Buyer may specify a decision rule that a certain Provider is to be selected unless prices offered by one or more other Providers are substantially better (e.g., 20% lower) than that offered by the otherwise preferred Provider. With this flexibility, the Buyer can take advantage of attractive prices and other benefits offered in the spot market without giving up the reliability and price stability offered by a term contract relationship with a primary Provider. The control computer or the Moderator could then choose the Buyer's primary

term contract Provider as the selected Provider when appropriate under the decision rules set by Buyer. Once the control computer or the Moderator selects a Provider to supply energy or services to a Buyer, the Buyer and that Provider are so notified by the control computer or the Moderator via electronic transmission. In most cases this may also be the point at which the selected Provider first learns the identity of the Buyer, unless the Buyer has given the control computer or the Moderator permission to reveal the Buyer's identity to the Providers as part of the RFS disclosure. After the selection of the winning Provider has been made, the Moderator will transmit, to some or all of the Providers who respond to the RFS, at least some of the bidding data submitted by responding Providers (most likely without revealing the identity of the winning Provider or that of the Buyer). This feedback will enable the losing Providers to adjust their bids on the next RFS distributed to them by the Moderator. If the Buyer and all of the prospective Providers (within the Buyer's preferred group of Providers) agree, or the rules under which the Moderator operates the bidding process so state and the Buyers and Providers still decide to participate, the Moderator could provide feedback to all bidding Providers of some or all of the prices bid by the different Providers in response to any RFS (most likely without revealing the identity of the winning Provider or that of the Buyer). This feedback would enable the Providers, while the bidding for a particular RFS is in progress and before a winner is selected, to adjust their bids and submit amended responses to the Moderator. The Moderator (or the control computer) may also provide to the Buyer, before or after the Moderator (or control computer) selects the winning Provider, at least some of the bidding data from some or all of the Providers responding to the Buyer's RFS. Once the Moderator (or control computer) has selected a winning Provider for the Buyer's RFS, the Moderator (or control computer) will transmit all or a portion of the transaction information to an Adjunct Computer via data link or other dedicated or shared telecommunications facility. This Adjunct Computer further processes the transaction information in order to process the energy usage data it receives from the meters of the end users to be supplied by this winning Provider. This transmission of processed energy usage data can be initiated by a query from the Moderator or the applicable control computer to the Adjunct Computer or can be downloaded at periodic intervals by the Adjunct Computer to the Moderator or the control computer. All of the functions of the Adjunct Computer can be performed by the Moderator, if use of an adjunct computer is not deemed advantageous for any reason. The Moderator and/or the control computer can communicate with one or more adjunct computers, which each can communicate with one or more end user meters. In the alternative, the Moderator can communicate directly with one or more end user meters via a data link or other shared or dedicated telecommunications facility. Different types of energy services (e.g., power quality and other ancillary services) as well as energy supplies may be provided by any Provider to any Buyer. The term Provider includes any seller or reseller of energy supply or services, regardless of whether that seller or reseller owns or operates any energy generation, production, transmission or distribution equipment or facilities. References herein to data links or other shared or dedicated telecommunications facilities may, for example, include any wireline or wireless facilities, whether part of the public switched telephone

network, private lines, the Internet, coaxial cable, electric utility power lines, Ethernet or other local area network (LAN), metropolitan area network (MAN) or wide area network (WAN) connections. Some Buyers may elect to submit an RFS that includes more than one request for future energy supply of services, e.g., one RFS specifying several delivery destinations, each with the same or different (i) future periods for which energy supply or services are being requested, (ii) quantities of energy required, (iii) quality criteria, (iv) load profiles at each destination, and/or (v) additional energy services to be provided. This composite RFS may also be submitted, for example, for the same delivery destination, but for different future periods. The Buyer may specify a maximum price it is willing to pay a Provider for the composite of all the energy supplies and/or services it requests in the RFS, or it may specify separate maximum prices for each (or any other combination) of the elements included in this RFS. Once the control computer or the Moderator has selected a winning Provider for the Buyer's RFS, the Moderator will transmit (perhaps by way of one or more adjunct computers with data links to the applicable Providers) selection notifications to the one or more Providers from whom the Buyer will purchase the energy supplies or services posted in the RFS. The control computer or the Moderator can also transmit Provider selection notifications to the Buyer informing the Buyer of the winning Provider or Providers and any relevant transaction information. To facilitate billing activity, the applicable control computer or the Moderator could transmit detailed information concerning actual energy usage for each Buyer to a Billing Computer immediately or at intervals specified by the administrator of the control computer, the Moderator or the Billing Computer, or by the Buyer or the selected Provider. This data, or billing reports derived therefrom, could thereafter be transmitted by the Billing Computer to the Buyer and/or the winning Provider via data link or other telecommunications facility. The functions of the Billing Computer could, as an alternative, be performed by the Moderator (or the applicable control computer). If billing for the particular purchase transaction entered into by the Buyer and the Provider does not require such detailed information (e.g., the Buyer purchased a set amount of energy supply for a certain future period, without regard to how many kilowatt hours are actually used), the Moderator (or control computer) could facilitate billing activity at any time (before or after the future delivery date specified as part of the transaction) and without receiving detailed energy usage data from the Buyer's meter. In this case, the Moderator (or control computer) would likely have all the relevant billing data as soon as the Buyer and Provider entered into this forward delivery purchase transaction.

Description of Figures and Exemplary Embodiments Figure 1 shows an exemplary system for carrying out the herein disclosed auction process for the provision of electric power or natural gas to end users (or resellers) in which a Moderator 1 administers the collection and dissemination of bidding information. The Moderator 1 includes a computer with a processor and memory, together with input and output devices to communicate with the Providers' energy management computers 2, which are the source of the bidding information. By means of these systems, the Providers bid to become the selected Provider of electric power or natural gas for an end user or group of end users (or resellers). The Providers transmit their bids from their energy management computers 2 over

data links 3, which may be either analog (using modems) or digital. However, the information is usually transmitted in digital form for input into the Moderator. Each Provider has an energy management administrator who enters energy management instructions into each energy management computer 2 through an input port 4 by means, for example, of a keyboard or a data link from a remote site or local computer. To give Providers more precise data on which to base their bids, the Moderator may transmit to Providers via data link some historical usage profile information for participating end users or groups of end users, particularly if an end user or reseller submits a request for future service to the Moderator for a substantial quantity of energy to be supplied in the future. The Moderator 1 receives the bids, processes them in its bidding processor 5 to produce provider selection data, and enters both into a database in its memory by means of the data buses and registers internal to a computer. The bids are sorted according to delivery destination within the respective service areas of the DISCOs for subscribing end users. The Moderator 1 processes the bids to prioritize them for each delivery destination, producing derivative data, including provider selection data. This data can reflect, for example, designation of a selected Provider and alternate Providers, based on the Providers' bids to supply the power or natural gas requirements of each end user or group of end users (or resellers). The Moderator can also designate a default Provider in the event, for example, the Provider selected by the bidding process has no additional capacity available. The Moderator 1 transmits the derivative data over a data link 7 to a control computer 8 associated with the end user or set of end users (or resellers) for which the submitted bids are applicable. The control computer 8 can apply decision rules, formulated and inputted by the control computer's administrator (e.g., the energy manager for a very large end user), to the derivative data received from the Moderator 1 in order to select a Provider. A control computer may be operated by the end user or reseller, the end user's DISCO, or the Moderator (on behalf of the end users or resellers associated with that control computer). In many cases, end users or resellers may prefer to deal directly with the Moderator or may not wish to assume the additional expense, if any, arising from the installation or operation of a control computer. In that event, no control computer would be required. As illustrated in Figures 7 and 10, the Moderator can perform all the functions that the control computer would otherwise perform, including the selection of a Provider offering the lowest rate (or best economic incentive) at that time to each such end user or reseller. As illustrated in Figure 1, once the control computer 8 selects a Provider for an end user or set of end users (or resellers), it transmits a notification of that selection to the Moderator via data link 7, or perhaps via data bus if the control computer is being operated by the Moderator 1. The Moderator 1 then transmits via data link 3 a selection notification to the selected Provider 2 and a specification of the estimated energy requirements of the end user or set of end users (or resellers) to be served. The Moderator will also transmit via data link 9 a copy of such selection notification to the DISCO 10 serving the end user or applicable set of end users. The Moderator 1, perhaps using an adjunct computer 11, collects actual energy usage data from the end user's meters 12 via the public switched telephone network 13. As illustrated in Figures 11 and 12, however, end user meters 12 may communicate usage data to the Moderator's adjunct

computer 11 via the Internet 14 (including posting such usage data to a website from which the Moderator's adjunct computer can download this data) or via a wireless communication network 15. Other networks, such as wide-area data networks or the communications facilities of a DISCO's local power grid, can also be used. An adjunct computer is known in the art to be a computer, closely associated with a primary computer, that provides the primary computer's operating software additional data or operating logic to provide the primary computer with additional operational capability. In the herein disclosed architecture, an adjunct computer 11 can be employed, for example, to collect energy usage data from end users' meters 12, process that data and transmit such processed data to the Moderator 1, each end user's current Provider 2 and the power grid or gas pipeline management computer and/or billing computer of that end user's DISCO 10. The adjunct computer 11 communicates with the Moderator 1 over a digital data link or data bus 16. If the Moderator has enough processing capacity, the function of the adjunct computer may be incorporated in the Moderator's processor and memory, the function being implemented in the processor by appropriate software. The data link 16 is illustrated as a dedicated transmission facility between the Moderator 1 and the adjunct computer 11. However, any other transmission technology offering a selective way to transmit data from the Moderator 1 to the adjunct computer 11 may be used. (A transmission facility is a telecommunication path or channel. It may be, for example, a wired link, a radio channel in a wireless system, or a time slot in a digitally multiplexed optical transmission system). A computer adjunct to the computer system used by a Provider and/or a DISCO to record and store the meter reading data for all of the Provider's and/or DISCO's end user customers (or perhaps belonging to an independent meter reading service entity performing this function in place of the DISCO) can also be employed to receive from the Moderator 1 or its adjunct computer 11, via data link 17, 18, the meter reading data measured by each end user's meter 12. The Moderator 1 also transmits at least a portion of the received bids to the energy network management computers 2 (or associated adjunct computers) of Providers over data links 3. There are many transmission technologies available to transmit this bid data to the Providers, including dedicated bidirectional links between the Moderator and each Provider. The data inputs and outputs of the Moderator 1, the control computers 8, the various adjunct computers, the energy network management computers 2, the end users' meters 12 and the DISCO's power grid or gas pipeline management and/or billing computers 10 are implemented by such devices as interfaces, registers and modems that are well known in the art. Figure 2 illustrates a system architecture in which the Providers' energy management computers 2 submit bids and receive data transmissions from the Moderator 1 over dedicated communications links 19. The control computer 8 receives rate information and/or provider selection data and transmits Provider selection notifications to the Moderator 1 over dedicated data links 20. The Moderator can transmit such a notification to the applicable Provider 2 over dedicated link 19 and to the applicable DISCO's power grid or pipeline management and/or billing computer 10 over shared data link 9. Figure 3 illustrates a system architecture in which data communications between the Moderator 1 and the Providers 2, between the Moderator and the control computers 8, and between the Moderator and

the DISCOs 10 are carried over shared data links 21, 22, 23, 24, 25, 26 in each respective case. This could be accomplished, for example, by many known local area network (LAN), metropolitan area network (MAN), and wide area network (WAN) technologies. Figure 4 illustrates an exemplary method of the herein disclosed invention in which Providers formulate bids and transmit these bids 28 to the Moderator. Upon receiving such bids 29, the Moderator processes the bids to determine which bids apply to which set of end users associated with each control computer 30, prioritizes the bids by, for example, listing the lowest bid first (and then the next lowest and so on) and generates provider selection data 31. The Moderator then transmits 32 rate information and/or provider selection data to each applicable control computer. After some initial processing of the bids received, the Moderator also transmits 33 at least a portion of the received bid information to competing Providers. The control computer receives from the Moderator the rate information and/or provider selection data, applies decision rules, if any, that the control computer administrator has inputted, and selects 34 a Provider for each set of end users this control computer serves. The control computer transmits 35 to the Moderator a notification identifying the Provider that has been selected, together with a specification of the estimated energy requirements for the set of end users this Provider will supply. The Moderator, in turn, will transmit 36 this information to a computer 37 associated with the selected Provider's energy network management computer and, perhaps, to the power grid or gas pipeline management and/or billing computer 38 of the DISCO that serves as the local energy distribution company for the set of end users to be supplied by the selected Provider. Figures 5 and 6 illustrate an exemplary system and method of the invention in which the control computers 8 transmit Provider selection notifications and specifications of estimated energy requirements directly to the selected Providers via data links 39 over an appropriate transmission system 40, 41 to each Provider 2. Figure 6 also shows that the control computer may transmit 42 Provider selection notifications and energy specification data directly to the applicable DISCOs as well. Figures 7, 8, 9 and 10 illustrate an exemplary system and method of the invention in which the Moderator 1 incorporates all of the functions of the control computers. As a result, no control computers are needed in this system architecture. The Moderator selects the Provider for each end user or set of end users (or resellers), as illustrated in Figure 10. The Moderator then notifies the selected Provider and the applicable DISCO of this Provider selection and transmits to the selected Provider and the applicable DISCO energy specification data for each end user or set of end users to be served. In Figure 7, shared data links are used for communication between the Moderator and the end users (or resellers). In Figure 8, the Moderator communicates with Providers and DISCOs via dedicated data links 19 and 43, respectively. In Figure 9, shared data links 3 and 9 are used for communication between the Moderator 1 and the Providers and between the Moderator 1 and the DISCO 10. Figure 13 illustrates an exemplary system of the invention in which energy usage is collected from end user meters 12 by the meter reading department 44 of the DISCO serving as the local energy distribution company for such end users. Transmission of such collected meter reading data by the DISCO to the Moderator's adjunct computer 11 may be accomplished by any of several wired

or wireless telecommunications technologies well known in the art. Figure 14 illustrates the same exemplary system as Figure 13, with the exception that, instead of the meter reading department of the applicable DISCO collecting usage data from end user meters, that function is performed by a third-party meter reading service 45 (independent of the DISCO). The Moderator, by means of a billing processor, can prepare a billing statement for each end user or reseller and transmit such statement via data link to the selected Provider for that end user or reseller. This billing processor receives from the Moderator's adjunct computer, via data link or data bus, processed meter reading data (including actual energy usage data) for each end user. By accessing the Moderator's database, the billing processor obtains the stored bid information for the bidder selected by the Moderator as the end user's or reseller's Provider during the period of time for which energy usage was measured by the end user's meter (or the meters of end users served by resellers). The billing processor matches this information with the processed meter reading data for that end user or reseller and creates a billing statement. As illustrated in Figure 15, the Moderator's adjunct computer 46 collects meter reading data from each end user being served and correlates 47 that usage data with the historical bid data of each of the Providers that were selected to serve this end user during various periods over the billing cycle. As a result of this processing, the Moderator can generate a bill for each end user (or the applicable reseller, if any). Figure 16 illustrates an alternative bill generation approach, in which the DISCO serving the applicable end user can generate a bill for that end user (or applicable reseller, if any) if the DISCO is responsible for collecting usage data 48 from end user meters. In this exemplary system, the Moderator transmits 49 to the applicable DISCO the historical bid data of each of the Providers that were selected to serve this end user during various periods over the billing cycle. The DISCO can correlate 50 this bid information with the meter reading data it collected from this end user's meter during the billing cycle in order to generate 51 a bill for this end user (or an applicable reseller, if any).

Claims

1. 13 1.A method for creating an automated bidding process among energy Providers for the benefit of a set of end users served by a first DISCO, in which a moderating computer collects bids from each Provider of a plurality of energy Providers, processes the bids and designates at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide at least one standard unit or block of electric power to the set of end users, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first DISCO data; b.in the moderating computer, transmitting at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers; and c.in the moderating computer, designating at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during at least a portion of a specific future time interval. 2.A method of Claim 1 in which the

moderating computer designates at least two Providers of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during the specific future time interval. 3.A method of Claim 1 in which the designated Providers, when their respective commitments are summed, are committed to provide the electric power required to supply 100% of the energy needs of the set of end users. 4.A method of Claim 1 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid. 5.A method of Claim 4 in which the moderating computer transmits at least a portion of the auction rules to at least a portion of the plurality of energy Providers. 6.A method of Claim 4 in which the bid formulation requirements specify that all bids indicate the quantity of standard units or blocks of electric power each Provider will provide, at a specific price, to the set of end users. 7.A method of Claim 1 comprising, in the moderating computer, receiving decision rules from an administrator associated with the moderating computer or from the set of end users, processing at least a portion of the first DISCO data and the decision rules, and designating at least a first designated Provider for the provision of electric power to the set of end users. 8.A method of Claim 1 in which the moderating computer transmits at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers subsequent to designating at least a first designated Provider to provide electric power to the set of end users. 9.A method of Claim 1 in which at least a first designated Provider is designated by the moderating computer as a default Provider or a contract Provider. 10.A method of Claim 1 in which at least one adjunct computer performs at least a portion of the processing and communications functions of the moderating computer. 11.A method for creating an automated bidding process among energy Providers for the benefit of a set of end users served by a first DISCO, in which a moderating computer collects bids from each Provider of a plurality of energy Providers, processes the bids and designates at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide at least one standard unit or block of electric power to the set of end users, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first DISCO data; b.in the moderating computer, transmitting at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers; c.in the moderating computer, designating at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during at least a portion of a specific future time interval; and d.in the moderating computer, or in the first DISCO, or in an independent meter reading service entity, transmitting periodic usage reports associated with the set of end users to at least a first designated Provider. 12.A method of Claim 11 in which the moderating computer designates at least two Providers of the plurality of energy

Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during the specific future time interval. 13.A method of Claim 11 in which the designated Providers, when their respective commitments are summed, are committed to provide the electric power required to supply 100% of the energy needs of the set of end users. 14.A method of Claim 11 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid. 15.A method of Claim 14 in which the moderating computer transmits at least a portion of the auction rules to at least a portion of the plurality of energy Providers. 16.A method of Claim 14 in which the bid formulation requirements specify that all bids indicate the quantity of standard units or blocks of electric power each Provider will provide, at a specific price, to the set of end users. 17.A method of Claim 11 in which the moderating computer transmits historical energy usage data associated with the set of end users to at least a portion of the plurality of energy providers. 18.A method of Claim 11 comprising, in the moderating computer, receiving decision rules from an administrator associated with the moderating computer or from the set of end users, processing at least a portion of the first DISCO data and the decision rules, and designating at least a first designated Provider for the provision of electric power to the set of end users. 19.A method of Claim 11 in which the moderating computer transmits at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers subsequent to designating at least a first designated Provider to provide electric power to the set of end users. 20.A method of Claim 11 in which at least one adjunct computer performs at least a portion of the processing and communications functions of the moderating computer. 21.A method for creating an automated bidding process among energy Providers for the benefit of a set of end users served by a first DISCO, in which a moderating computer collects bids from each Provider of a plurality of energy Providers, processes the bids and communicates with a first control computer, thereby enabling the first control computer to designate at least two Providers of the plurality of energy Providers to provide electric power to the set of end users, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide at least one standard unit or block of electric power to the set of end users, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first DISCO data; b.in the moderating computer, transmitting at least a portion of the first DISCO data to the first control computer; c.in the moderating computer or the first control computer, transmitting at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers; and d.in the first control computer, designating at least two Providers of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during at least a portion of a specific future time interval.

2. 22.A method of Claim 21 in which the designated Providers, when their respective commitments are summed,

are committed to provide the electric power required to supply 100% of the energy needs of the set of end users. 23.A method of Claim 21 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid. 24.A method of Claim 23 in which the bid formulation requirements specify that all bids indicate the quantity of standard units or blocks of electric power each Provider will provide, at a specific price, to the set of end users. 25.A method for creating an automated bidding process among energy Providers for the benefit of a set of end users served by a first DISCO, in which a moderating computer collects bids from each Provider of a plurality of energy Providers, processes the bids and communicates with a first control computer, thereby enabling the first control computer to designate at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide at least one standard unit or block of electric power to the set of end users, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first DISCO data; b.in the moderating computer, transmitting at least a portion of the first DISCO data to the first control computer; c.in the moderating computer or the first control computer, transmitting at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers; d.in the first control computer, designating at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during at least a portion of a specific future time interval; and e.in the moderating computer, or in the first control computer, or in the first DISCO, or in an independent meter reading service entity, transmitting periodic usage reports associated with the set of end users to at least a first designated Provider.

3. 26.A method of Claim 25 in which the moderating computer designates at least two Providers of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during the specific future time interval. 27.A method of Claim 25 in which the designated Providers, when their respective commitments are summed, are committed to provide the electric power required to supply 100% of the energy needs of the set of end users. 28.A method of Claim 25 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid. 29.A method of Claim 28 in which the moderating computer transmits at least a portion of the auction rules to at least a portion of the plurality of energy Providers. 30.A method of Claim 28 in which the bid formulation requirements specify that all bids indicate the quantity of standard units or blocks of electric power each Provider will provide, at a specific price, to the set of end users. 31.A method of Claim 25 comprising, in the first control computer, receiving decision rules from an administrator associated with the first control computer or from the set of end users, processing at least a portion of the

first DISCO data and the decision rules, and designating at least a first designated Provider for the provision of electric power to the set of end users.32.A method of Claim 25 in which the moderating computer or the first control computer transmits at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers subsequent to the first control computer designating at least a first designated provider to provide electric power to the set of end users.33.A method of Claim 25 in which at least a first designated Provider is designated by the first control computer as a default Provider or a contract Provider.34.A method of Claim 25 in which the first control computer is operated by the moderating computer, or by the set of end users, or by a reseller to the set of end users, or by the first DISCO.35.A method of Claim 25 in which at least a portion of the processing and communications functions of the moderating computer or the first control computer are performed by one or more adjunct computers.36.A method of Claim 25 in which the first control computer is a computer adjunct to the moderating computer. 37.An energy bidding moderator for enabling designation of at least one Provider of a plurality of energy Providers for the provision of electric power to a set of end users served by a first DISCO, based on an economic choice in accordance with auction rules, comprising: a.a computer with a processor and a memory; b.means for receiving, from each Provider of a plurality of energy Providers, bids to provide at least one standard unit or block of electric power to the set of end users; c.means for processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in the memory as first DISCO data; d.means for transmitting at least a portion of the first DISCO data to at least a portion of the plurality of energy Providers; and e.means for designating at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during at least a portion of a specific future time interval. 38.A moderator of Claim 37 including means for designating at least two Providers of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during the specific future time interval.39.A moderator of Claim 37 including means for designating at least one Provider committed to provide the electric power required to supply 100% of the energy needs of the set of end users.40.A moderator of Claim 37 including means for including bid formulation requirements in the auction rules, the bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid.41.A moderator of Claim 40 including means for transmitting at least a portion of the auction rules to at least a portion of the plurality of energy Providers.42.A moderator of Claim 40 including means for including bid formulation requirements specifying that all bids indicate the quantity of standard units or blocks of electric power each Provider will provide, at a specific price, to the set of end users.43.A moderator of Claim 37 further including means for receiving decision rules from an administrator associated with the moderator or from the set of end users, processing at least a portion of the first DISCO data and the decision rules, and designating at least a first

designated Provider for the provision of electric power to the set of end users.44.A moderator of Claim 37 including means for notifying each designated Provider of its designation to provide electric power to the set of end users and notifying the first DISCO of the Provider's designation.

4. 45.A moderator of Claim 37 including means for one or more adjunct computers to perform at least a portion of the processing and communications functions of the moderator. 46.A method for conducting an automated bidding process among a plurality of energy Providers for the benefit of end users, based on an economic choice in accordance with auction rules, comprising: a.collecting, from each Provider of a plurality of energy Providers, bids to provide at least one standard unit or block of electric power to a set of end users served by a first DISCO; b. processing the bids that apply to the set of end users in accordance with the auction rules; c.distributing at least a portion of processed bid information to at least a portion of the plurality of energy Providers; d.designating, on the basis of the processed bid information, at least one Provider of the plurality of energy Providers to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during at least a portion of a specific future time interval; and e.making available periodic usage reports associated with the set of end users to at least a first designated Provider, thereby enabling the at least a first designated Provider to adjust its electric power supply during at least a portion of the specific future time interval in which the at least a first designated Provider supplies at least a portion of the electric power to be used by the set of end users at at least one end-user facility. 47.A method of Claim 46 in which at least two Providers of the plurality of energy Providers are designated, on the basis of the processed bid information, to provide electric power to the set of end users, with each designated Provider to supply at least a portion of the electric power to be used by the set of end users at at least one end-user facility during the specific future time interval.48.A method of Claim 46 in which the designated Providers, when their respective commitments are summed, are committed to provide the electric power required to supply 100% of the energy needs of the set of end users.49.A method of Claim 46 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the bid to be considered valid.50.A method of Claim 49 in which at least a portion of the auction rules are distributed to at least a portion of the plurality of energy Providers.51.A method of Claim 49 in which the bid formulation requirements specify that all bids indicate the quantity of standard units or blocks of electric power each Provider will provide, at a specific price, to the set of end users.52.A method of Claim 46 in which historical energy usage data associated with the set of end users is distributed to at least a portion of the plurality of energy providers.53.A method of Claim 46 in which each of Steps a. e. is accomplished by means of computer processing.54.A method of Claim 46 in which at least a portion of the processed bid information is distributed to at least a portion of the plurality of energy Providers subsequent to designating at least a first designated Provider to provide electric power to the set of end users. 55.A method for creating an automated bidding process among energy Providers for the benefit of end users in which a moderating computer collects bids from each Provider of a plurality of

energy Providers, processes the bids and designates at least one Provider of the plurality of energy Providers to provide energy to at least one end user, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide energy to the at least one end user, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first end-user set data; b.in the moderating computer, transmitting at least a portion of the first end-user set data to at least a portion of the plurality of energy Providers; and c.in the moderating computer, designating at least one Provider of the plurality of energy Providers to provide energy to the at least one end user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during at least a portion of a specific future time interval.15 56.A method of Claim 55 in which the moderating computer designates at least two Providers of the plurality of energy Providers to provide energy to the at least one end user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during the specific future time interval.57.A method of Claim 55 in which the designated Providers, when their respective commitments are summed, are committed to supply 100% of the energy needed by the at least one end user.58.A method of Claim 55 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid.59.A method of Claim 58 in which the moderating computer transmits at least a portion of the auction rules to at least a portion of the plurality of energy Providers.60.A method of Claim 58 in which the bid formulation requirements specify that all bids indicate the quantity of energy each Provider will provide, at a specific price, to the at least one end user.61.A method of Claim 55 in which the moderating computer transmits historical energy usage data associated with the at least one end user to at least a portion of the plurality of energy providers.62.A method of Claim 55 in which at least one adjunct computer performs at least a portion of the processing and communications functions of the moderating computer.63.A method of Claim 55 including, in the moderating computer, transmitting at least a portion of the first end-user set data to the at least one end user.64.A method of Claim 55 comprising, in the moderating computer, receiving decision rules from an administrator associated with the moderating computer or from the at least one end user, processing at least a portion of the first end-user set data and the decision rules, and designating at least a first designated Provider for the provision of energy to the at least one end user.65.A method of Claim 55 including, in the moderating computer, transmitting a designation notification to each designated Provider and transmitting to a first DISCO serving the at least one end user at least a portion of the information contained in the designation notification.66.A method of Claim 55 in which the moderating computer transmits at least a portion of the first end-user set data to at least a portion of the plurality of energy Providers subsequent to designating at least a first designated Provider to provide energy to the at least one end user.67.A method of Claim 55 in which at least a first designated Provider is designated by the moderating computer to supply a specific

quantity or block of energy.68.A method of Claim 55 in which at least a first designated Provider is designated by the moderating computer as a default Provider or a contract Provider.18 69.A method for creating an automated bidding process among energy Providers for the benefit of end users in which a moderating computer collects bids from each Provider of a plurality of energy Providers, processes the bids and designates at least one Provider of the plurality of energy Providers to provide energy to at least one end user, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide energy to the at least one end user, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first end-user set data; b.in the moderating computer, transmitting at least a portion of the first end-user set data to at least a portion of the plurality of energy Providers; c.in the moderating computer, designating at least one Provider of the plurality of energy Providers to provide energy to the at least one end user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during at least a portion of a specific future time interval; and d.in the moderating computer, or in a first DISCO serving the at least one end user, or in an independent meter reading service entity, transmitting periodic usage reports associated with the at least one end user to at least a first designated Provider.70.A method of Claim 69 in which the moderating computer designates at least two Providers of the plurality of energy Providers to provide energy to the at least one end user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during the specific future time interval.71.A method of Claim 69 in which the designated Providers, when their respective commitments are summed, are committed to supply 100% of the energy needed by the at least one end user.72.A method of Claim 69 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid .73.A method of Claim 72 in which the moderating computer transmits at least a portion of the auction rules to at least a portion of the plurality of energy Providers.74.A method of Claim 72 in which the bid formulation requirements specify that all bids indicate the quantity of energy each Provider will provide, at a specific price, to the at least one end user.75.A method of Claim 69 in which the moderating computer transmits historical energy usage data associated with the at least one end user to at least a portion of the plurality of energy providers.76.A method of Claim 69 in which the moderating computer transmits at least a portion of the first end-user set data to at least a portion of the plurality of energy Providers subsequent to designating at least a first designated Provider to provide energy to the at least one end user.77.A method of Claim 69 in which at least one adjunct computer performs at least a portion of the processing and communications functions of the moderating computer.78.A method for creating an automated bidding process among energy Providers for the benefit of end users in which a moderating computer collects bids from each Provider of a plurality of energy Providers, processes the bids and communicates with a first control computer, thereby enabling the first control com-

puter to designate at least two Providers of the plurality of energy Providers to provide energy to the at least one end user, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide energy to the at least one end user, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first control computer data; b.in the moderating computer, transmitting at least a portion of the first control computer data to the first control computer; c.in the moderating computer or the first control computer, transmitting at least a portion of the first control computer data to at least a portion of the plurality of energy Providers; and d.in the first control computer, designating at least two Providers of the plurality of energy Providers to provide energy to the at least one end user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during at least a portion of a specific future time interval.19 79.A method of Claim 78 in which the designated Providers, when their respective commitments are summed, are committed to supply 100% of the energy needed by the at least one end user.80.A method of Claim 78 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid.81.A method of Claim 80 in which the bid formulation requirements specify that all bids indicate the quantity of energy each Provider will provide, at a specific price, to the at least one end user.82.A method for creating an automated bidding process among energy Providers for the benefit of end users in which a moderating computer collects bids from each Provider of a plurality of energy Providers, processes the bids and communicates with a first control computer, thereby enabling the first control computer to designate at least one Provider of the plurality of energy Providers to provide energy to the at least one end user, based on an economic choice in accordance with auction rules, wherein the method comprises: a.in the moderating computer, receiving bids to provide energy to the at least one end user, processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first control computer data; b.in the moderating computer, transmitting at least a portion of the first control computer data to the first control computer; c.in the moderating computer or the first control computer, transmitting at least a portion of the first control computer data to at least a portion of the plurality of energy Providers; d.in the first control computer, designating at least one Provider of the plurality of energy Providers to provide energy to the at least one end user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during at least a portion of a specific future time interval; and e.in the moderating computer, or in the first control computer, or in a first DISCO serving the at least one end user, or in an independent meter reading service entity, transmitting periodic usage reports associated with the at least one end user to at least a first designated Provider.

5. 20 83.A method of Claim 82 in which the first control computer designates at least two Providers of the plurality of energy Providers to provide energy to the at least one end

user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during the specific future time interval.84.A method of Claim 82 in which the designated Providers, when their respective commitments are summed, are committed to supply 100% of the energy needed by the at least one end user.21 85.A method of Claim 82 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid.86.A method of Claim 85 in which the moderating computer transmits at least a portion of the auction rules to at least a portion of the plurality of energy Providers.87.A method of Claim 85 in which the bid formulation requirements specify that all bids indicate the quantity of energy each Provider will provide, at a specific price, to the at least one end user.21 88.A method of Claim 82 in which the moderating computer or the first control computer transmits historical energy usage data associated with the at least one end user to at least a portion of the plurality of energy providers.89.A method of Claim 82 comprising, in the first control computer, receiving decision rules from an administrator associated with the first control computer or from the at least one end user, processing at least a portion of the first control computer data and the decision rules, and designating at least a first designated-Provider for the provision of energy to the at least one end user.90.A method of Claim 82 including, in the moderating computer or the first control computer, notifying each designated Provider of its designation to provide energy to the at least one end user and notifying the first DISCO of the Provider's designation.91.A method of Claim 82 in which the moderating computer or the first control computer transmits at least a portion of the first control computer data to at least a portion of the plurality of energy Providers subsequent to the first control computer designating at least a first designated provider to provide energy to the at least one end user.21 92.A method of Claim 82 in which at least a first designated Provider is designated by the first control computer as a default Provider or a contract Provider.93.A method of Claim 82 in which the first control computer is operated by the moderating computer, or by the at least one end user, or by a reseller to the at least one end user, or by the first DISCO.94.A method of Claim 82 in which the first control computer is a computer adjunct to the moderating computer.21 95.A method of Claim 82 in which at least a portion of the processing and communications functions of the moderating computer or the first control computer are performed by one or more adjunct computers.22 96.An energy bidding moderator for enabling designation of at least one Provider of a plurality of energy Providers for the provision of energy to at least one end user, based on an economic choice in accordance with auction rules, comprising: a.a computer with a processor and a memory; b.means for receiving, from each Provider of a plurality of energy Providers, bids to provide energy to at least one end user; c.means for processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in the memory as first end-user set data; d.means for transmitting at least a portion of the first end-user set data to at least a portion of the plurality of energy Providers; and e.means for designating at least one Provider of the plurality of energy Providers to provide energy to the at least one end user, with each

designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during at least a portion of a specific future time interval.

6. 97.A moderator of Claim 96 further including means for receiving decision rules from an administrator associated with the moderator or from the at least one end user, and applying the decision rules to the first end-user set data to designate at least a first designated Provider for the provision of energy to the at least one end user.98.A moderator of Claim 96 including means of notifying each designated Provider of its designation to provide energy to the at least one end user and notifying a first DISCO serving the at least one end user of the Provider's designation.

7. 23 99.A moderator of Claim 96 including means for designating at least one Provider committed to supply 100% of the energy needed by the at least one end user.100.A moderator of Claim 96 including means for including bid formulation requirements in the auction rules, the bid formulation requirements specifying the required elements that must be reflected in the bid for the moderator to consider the bid valid.101.A moderator of Claim 100 including means for transmitting at least a portion of the auction rules to at least a portion of the plurality of energy Providers.102.A moderator of Claim 100 including means for including bid formulation requirements specifying that all bids indicate the quantity of energy each Provider will provide, at a specific price, to the at least one end user.103.A moderator of Claim 96 including means for at least one adjunct computer to perform at least a portion of the processing and communications functions of the moderating computer.24 23 104.A method for conducting an automated bidding process among a plurality of energy Providers for the benefit of end users, based on an economic choice in accordance with auction rules, comprising: a.collecting, from each Provider of a plurality of energy Providers, bids to provide energy to at least one end user; b.processing the bids that apply to the at least one end user in accordance with the auction rules; c.distributing at least a portion of processed bid information to at least a portion of the plurality of energy Providers; d.designating, on the basis of the processed bid information, at least one Provider of the plurality of energy Providers to provide energy to the at least one end user, with

each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during at least a portion of a specific future time interval; and e.making available periodic usage reports associated with the at least one end user to at least a first designated Provider, thereby enabling the at least a first designated Provider to adjust its energy supply during at least a portion of the specific future time interval in which the at least a first designated Provider supplies at least a portion of the energy to be used by the at least one end user at at least one end-user facility.105.A method of Claim 104 in which at least two Providers of the plurality of energy Providers are designated, on the basis of the processed bid information, to provide energy to the at least one end user, with each designated Provider to supply at least a portion of the energy to be used by the at least one end user at at least one end-user facility during the specific future time interval.106.A method of Claim 104 in which the designated Providers, when their respective commitments are summed, are committed to supply 100% of the energy needed by the at least one end user.107.A method of Claim 104 in which the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the bid to be considered valid.108.A method of Claim 107 in which at least a portion of the auction rules are distributed to at least a portion of the plurality of energy Providers.109.A method of Claim 107 in which the bid formulation requirements specify that all bids indicate the quantity of energy each Provider will provide, at a specific price, to the at least one end user.110.A method of Claim 104 in which historical energy usage data associated with the at least one end user is distributed to at least a portion of the plurality of energy providers.111.A method of Claim 104 in which each of Steps a. - e. is accomplished by means of computer processing.112.A method of Claim 104 in which at least a portion of the processed bid information is distributed to at least a portion of the plurality of energy Providers subsequent to the designating of at least a first designated Provider to provide energy to the at least one end user.

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January 30, 2003

BY FEDERAL EXPRESS #8329 5275 0713
& FIRST CLASS MAIL-CERTIFIED #7106 4575 1294 0714 1785

Re: Public Service Electric & Gas Company
Jersey Central Power & Light Company
Conectiv Power Delivery
Rockland Electric Company

Irah H. Donner, Esq.
Hale and Dorr, LLP
1455 Pennsylvania Ave., N.W.
Suite 1000
Washington, D.C. 20004

Dear Mr. Donner:

As you know, we represent Geophonic Networks, Inc. ("Geophonic"), the holder of U.S. Patent No. 6,047,274 (the "'274 Patent"). The '274 Patent applies to energy auctions such as the first New Jersey basic generation service ("BGS") auction held in February 2002 and the second BGS auction planned for February 2003.

On January 30, 2003, the United States Patent & Trademark Office published U.S. Patent Application Serial No. 10/062,798, as amended September 18, 2002 (the "Application"), as the result of Geophonic's request for early publication made pursuant to 35 U.S.C. § 122(b). The published Application is attached for your reference.

Irah H. Donner, Esq.
Hale and Dorr, LLP
January 30, 2003
Page 2

The published Application is in the format electronically submitted to the USPTO as part of the early publication process. To facilitate easier reading, we have also attached a copy of the Application as originally filed in hard copy on January 31, 2002 and amended on September 18, 2002.

The published Application contains 112 new claims, all of which are fully supported in the original patent specification filed with the USPTO in 1997 and 1998 and which resulted in the '274 Patent issued in April 2000. These 112 new claims, when added to the claims issued as part of the '274 Patent, make it even more certain that the February 2003 BGS auction will infringe Geophonic's patent rights.

This letter shall serve as notice of the publication on January 30, 2003 of the Application to you and your clients participating in the New Jersey BGS auction planned for February 2003, including Public Service Electric & Gas Company, Jersey Central Power & Light Company, Conectiv Power Delivery, Rockland Electric Company, and their respective affiliates. Under 35 U.S.C. §154(d) (copy enclosed), the publication of the Application provides Geophonic with the right, before a patent is issued, to a reasonable royalty from any person who had actual notice of the published Application and who makes, uses, offers for sale or sells in the United States the invention as claimed in the published Application. This right to a reasonable royalty accrues immediately.

Geophonic's right to a reasonable royalty under 35 U.S.C. §154(d) assumes that the invention as claimed in the patent (when issued) resulting from the Application is substantially identical to the invention as claimed in the published Application. As a point of reference, you and your clients are probably aware that the claims in the application for the earlier '274 Patent were allowed by the U.S. Patent & Trademark Office with no changes. We expect a similar outcome for the attached Application.

As we have stated in our prior correspondence with you and the New Jersey Board of Public Utilities ("BPU"), Geophonic continues to stand ready to provide a license to the BPU and/or any or all of the four participating EDCs (or their respective affiliates), at a reasonable royalty rate, for the use of Geophonic's patented energy auction process in BPU-approved BGS auctions.

MCCARTER & ENGLISH, LLP

Irah H. Donner, Esq.
Hale and Dorr, LLP
January 30, 2003
Page 3

We look forward to discussing this matter with you. For your convenience, in our Federal Express package sent to you today, we have enclosed four sets of this letter (and our letters to the BPU and NERA) and the published Application to facilitate your distribution of this material to your clients.

Very truly yours,



David W. Opderbeck

Attachments

cc (without attachments):

Jeanne M. Fox, BPU President
Frederick F. Butler, BPU Commissioner
Carol J. Murphy, BPU Commissioner
Connie O. Hughes, BPU Commissioner
Jack Alter, BPU Commissioner
Nusha Wyner, Director – Division of Energy

United States Code Title 35 - Patents

35 U.S.C. 154 Contents and term of patent; provisional rights.

(d) PROVISIONAL RIGHTS.—

(1) IN GENERAL.— In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b), or in the case of an international application filed under the treaty defined in section 351(a) designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

(A) (i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

(B) had actual notice of the published patent application and, in a case in which the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, had a translation of the international application into the English language.

(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.— The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.— The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

**STATE OF NEW JERSEY****Board of Public Utilities****Two Gateway Center****Newark, NJ 07102****www.bpu.state.nj.us****ENERGY**

IN THE MATTER OF AMENDMENT TO THE)
THIRD PARTY SUPPLIER AGREEMENT) DECISION AND ORDER
DOCKET NO. EX03030185

BY THE BOARD:

By Order dated August 17, 1999, the Board of Public Utilities ("Board") approved the Master Third Party Supplier ("TPS") Agreement, version 13 ("TPS Agreement"), to be used by all four of the New Jersey electric distribution companies ("EDCs"), including Public Service Electric & Gas Company ("PSE&G"), Jersey Central Power & Light Company ("JCP&L") formerly GPU Energy, Conectiv Power Delivery ("Conectiv") formerly Conectiv Electric, and Rockland Electric Company ("Rockland"), when entering into a commercial relationship with third party suppliers serving the New Jersey retail electric marketplace in the EDC's service territory. As part of the TPS Agreement, certain creditworthiness standards were adopted that must be met by each TPS in order to provide financial protection to the EDCs and ratepayers.

By way of background, the current TPS Agreement has been used successfully by the EDCs and TPSs since 1999, and its purpose is to protect the EDCs and customers from the possibility of default by a TPS. However, in response to a concern raised by the retail marketers and due to changes in the retail marketplace and in the way New Jersey procures Basic Generation Service ("BGS"), these creditworthiness provisions no longer accurately reflect current risk to the EDCs.

In 1999, the EDCs were responsible for procuring the supply to meet their BGS requirements. At that time, the EDCs were at risk for a TPS default. The risk involved included the difference between the price per kilowatt hour ("kwh") charged by the EDC and the cost (per kwh) of supplying incremental, unplanned load. Since then, the Board has approved a BGS Auction process for procuring BGS supply and has authorized a Pennsylvania-New Jersey-Maryland Interconnect ("PJM")-based hourly pricing structure for larger customers, which significantly diverts the default risk away from the EDCs and places it upon the wholesale BGS suppliers. By Order dated May 8, 2003, the Board determined that the present creditworthiness standards found in the TPS Agreement no longer accurately reflect the current level of risk to the EDCs and that the TPS Agreement was in need of amendment. The Board further determined that the TPS Agreement should be updated to remove outdated language and terminology, and also to accurately portray current market conditions and procurement practices. Therefore, in its May 8, 2003 Order, the Board directed the EDCs to file a amended TPS Agreements and Appendices reflecting and limited to changes to these areas, for comment by interested parties.

1. *Phragmites australis* (Cav.) Trin. ex Steud.

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On May 14, 2003, Rockland filed its amended TPS Agreement with the Board. Rockland's Agreement is substantially different from the other EDCs' TPS Agreements because some of its New Jersey customers are served by the Pennsylvania-New Jersey-Maryland Interconnect ("PJM"), while others are served by the New York Independent System Operator ("NYISO"). By May 15, 2003, the three other EDCs, PSE&G, JCP&L, and Conectiv, filed their amended TPS Agreements with the Board, all three of which are very similar in language. The filings were distributed to the industry via the Board's electronic list server and through the TPS Service List.

The EDCs' proposed amendments include: the addition of definitions for Commercial Industrial Energy Pricing ("CIEP") customers and Fixed Price ("FP") customers; a change to the definition of Interest Index, in order to reflect current market conditions; removal of Year 2000 ("y2k") language; changes to the standards governing the initial determination of creditworthiness of a TPS, to reflect current market practices; reduction of the cure period for TPS default from ten to three days; reduction of the written notice period for a lapse of creditworthiness by a TPS from ten to three days; added language to the format for the submission of credit notices; added language to protect the non-public credit support data of a TPS that is submitted to the EDC; added creditworthiness standards for TPSs serving CIEP customers, FP customers, and for TPSs serving both; any necessary changes to the EDCs' name, contact information, Independent Systems Operator affiliation in the case of Rockland; and additional language changes.

Comments were received from: Reliant Resources, Inc. ("Reliant"); Constellation NewEnergy, Inc. ("Constellation"); Strategic Energy, L.L.C. ("Strategic"), and; the Mid-Atlantic Power Supply Association ("MAPSA"). The comments generally proposed reducing the creditworthiness standards and credit obligations to the EDCs, and changing the EDCs' proposed cure period for default situations from three days to five or ten days. Some commenters also addressed the 14-day customer rescission period for canceling a contract with a TPS, which has always been limited to residential customers only. Specifically, the commenters positions were as follows:

- Reliant is requesting five business days for the defaulting party to remedy the default situation and/or resolve a dispute, instead of the three days proposed by the EDCs. Reliant also wants language in the TPS Agreement that states the 14-day rescission policy is only applicable to residential customers. Reliant further proposes that all data used by the EDC to determine creditworthiness be treated as confidential. Reliant also requests that it be given thirty days to present the EDCs with updated 10-Qs and 10-Ks. Reliant has also proposed additional language on how the amount of security should be adjusted when required. Reliant also proposed some other minor language changes and clarifications to the TPS Agreement.
- Constellation proposes that the 14-day customer rescission policy to legally break a TPS contract should be limited to residential customers only. Constellation also states that the \$2800 per megawatt ("MW") guarantee of payment by a TPS, in case of default, is an arbitrary number with no direct relationship to the TPS' obligation.
- Strategic asserts that the 14-day rescission period should apply to residential customers only, and that it believes the amended TPS Agreement is unclear on that issue. Strategic requests that the Board reject the changes to the credit requirements for TPSs and that there should be no other credit obligations imposed on TPSs by the EDCs. However, they contend that in lieu of the EDCs' proposed creditworthiness provisions, and only in cases where TPSs dual bill, in which the TPS and the EDC provide separate bills to the customer for their own charges, the EDCs should establish a maximum credit

requirement of the greater of \$1000 or \$70 per MW of TPS peak load obligation as a reasonable amount of security in case of default.

- MAPSA asserts that the 14-day rescission period applies to residential customers only, and that the Amended TPS agreement should be clear on that issue. MAPSA also recommends that the Board order the EDCs to eliminate all requirements for TPSs to post security with the EDCs. And finally, MAPSA recommends that the cure period, to remedy a default situation should remain at the existing 10-day period instead of the 3-day period proposed by the EDCs.

DISCUSSION AND FINDINGS

Based on its review of the proposed TPS Agreements and the comments submitted, the Board finds that the proposed changes made by the EDCs concerning the creditworthiness standards, credit obligations, and the cure period in the event of default appear to be reasonable. The creditworthiness standards and credit obligations for the TPSs are necessary to protect the EDCs and the ratepayers from financial harm. The shorter cure period proposed by the EDCs reflects past experience that some entities can potentially move rapidly into a default condition, and thus a shorter cure period will further protect all parties from financial harm. Moreover, these changes proposed by the EDCs are consistent with the current BGS Master Supplier Agreement used by the EDCs and wholesale suppliers.

As noted above, a number of parties commented on the current 14-day customer rescission period, that allows residential customers the legal right to cancel a contract signed with a TPS, within 14 days of receipt of the customer notification letter from the EDC. Although this issue is outside the scope of changes to the TPS Agreement that the Board envisioned in its May 8, 2003 Order, the Board will address this area for purposes of clarification.

This issue was discussed at length in working group meetings during 1999. Rescission rights are, and have always been, limited to residential customers only. The Board's May 5, 1999 Order (Docket No. EX94120585Y) et. al.) addresses the issue and provides for a customer notification letter with a 14-day rescission period. At the time, the Board was very concerned with the possibility of slamming, so rescission letters went to all classes of customers. The rescission letters were not intended to and do not suggest that commercial customers can abrogate their contractual obligations. According to N.J.A.C. 14:4-3.6 (b) 4, only residential customers can rescind their TPS contract in that 14-day time period. Therefore the Board does not believe that this area of the proposed TPS Agreement needs to be changed at this time.

Based on the foregoing, the Board APPROVES the amended TPS Agreements of PSE&G, JCP&L, Conectiv, and Rockland as filed, and ORDERS the EDCs to post them on their websites. The Board also DIRECTS that the EDCs use the amended TPS Agreement when entering into any future commercial relationship with third party suppliers in the EDC's service territory. The Board FURTHER DIRECTS the EDCs to execute amended TPS Agreements with its current third party suppliers and to process all required TPS documentation, including the TPS Agreement and TPS credit information, in a timely manner.

Furthermore, the Board DIRECTS all TPSs serving retail load in New Jersey, to execute the new TPS Agreement, satisfy all of its terms, and satisfy all EDC requirements prior to enrolling customers for service beginning in August 2003 and beyond. The TPS shall not submit enrollments until the EDC provides notification that it is eligible to do so. If a TPS intends to enroll new customers with BGS-CIEP meters during the July 1, 2003 through July 11, 2003

enrollment period that is required to enable an August 1, 2003 customer start of service, the EDC must receive the newly executed Agreement, and the TPS must satisfy all of the terms of the Agreement and all EDC requirements on or before July 7, 2003.

A TPS that has existing customers, but does not intend to immediately enroll new customers shall execute the Agreement by July 15, 2003, and the TPS must satisfy all of the terms of the Agreement by that same date, or the TPS' customers will be returned to BGS effective with their August 2003 meter reading date.

DATED: 6/20/03

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PROVISION OF
BASIC GENERATION SERVICE
FOR YEARTWO OF THE
POST-TRANSITION PERIOD

:
:
: Docket No. EO03050394
:
:
:

Public Service Electric and Gas Company, Jersey Central Power
& Light Company, Atlantic City Electric Company doing business
as Conectiv Power Delivery, and Rockland Electric Company

**PROPOSAL FOR
BASIC GENERATION SERVICE
REQUIREMENTS TO BE PROCURED EFFECTIVE
JUNE 1, 2004**

July 1, 2003

مجلسه اول

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I. OVERVIEW OF THE EDCS' PROPOSAL

The EDCs have worked together to develop a detailed proposal for the competitive bidding of BGS that builds on the experience of prior BGS Auctions. The proposal for the Post Transition Year 2 BGS competitive bid process is summarized below.

1. BGS procurement offers will be conducted through a statewide Auction Process that simultaneously seeks offers for all BGS Load in the State. Appendices A and B are the Auction Rules and further describe this Auction Process.
2. The Auction will seek offers for the supply of full requirements tranches of each EDC's BGS-FP Load. Tranches will be identical and uniform within each EDC and will represent a fixed percentage of the EDC's total BGS-FP Load. That percentage, established in Year 5 (Post Transition Year 1) for each EDC, is the same percentage for each EDC that applies to the 34-month tranches procured in Post Transition Year 1. As one-third of the EDC load has already been procured for 24 months beyond the start of Post Transition Year 2, two-thirds of EDC load will be procured for terms starting June 1, 2004, the start of Post Transition Year 2. The majority of the EDCs propose that one-half of that requirement, or one-third of each EDC's total BGS-FP Load, will be procured for a one year term. The remaining one-half of the requirement will be procured for a period of three years. The end result of this Auction will be that beginning June 1, 2005, and each June 1 thereafter, the EDCs will have under contract one-third of their total BGS Load with a remaining contract term of one year, one-third of their total BGS Load with a remaining contract term of two years, and will need to procure one-third of their total BGS Load for a term of three years¹ in order to maintain this term averaging.²
3. The EDCs are requesting that the Board approve the Auction Process proposal made for Post Transition Year 2 and also approve in concept that Auctions will be held for the

¹ RECO has only four tranches. Therefore, it will deviate from the 1/3, 1/3, 1/3 term allocation and have a 1/4, 1/4, 1/2 term allocation. For the other EDCs, the percentages are as close to 1/3, 1/3, 1/3 as rounding permits.

² JCP&L takes no position regarding the term-averaging approach to BGS-procurement.

open position in Post Transition Year 3 and Post Transition Year 4 on approximately the same schedule as proposed in this Auction and used in the prior two Auctions. Such approval would require compliance filings on July 1, 2004 (for Post Transition Year 3) and July 1, 2005 (for Post Transition Year 4). These compliance filings would include Auction Rules, proposed changes to the BGS Master Supplier Agreements, and information that tracks that provided in the Company Specific Addenda (e.g., contingency plans, rate design details, proposed tariff sheets, and accounting and cost recovery procedures). The Board would have an opportunity to review these compliance filings and direct any changes. The EDCs would request that the Board make a determination on the annual compliance filings by mid-September to allow sufficient time for the conduct of the Auctions.

4. The EDCs will use a Clock Auction to procure BGS-FP supply. In a round, bidders will state how many tranches they wish to serve of a product (an EDC's BGS-FP Load for a given term) at the price in that round. The Auction ends when the amount supplied is equal to the amount the EDCs wish to procure. There will be a single clearing price for the BGS-FP Load of each EDC for a given term that will apply to all tranches for that EDC for that term. Payments to bidders for July through September will be shaped to reflect higher summer costs by the use of a multiplicative factor on the Auction price (e.g., 1.2). Payments to bidders for the remainder of the bid period will be shaped to reflect lower winter costs by the use of a different multiplicative factor (e.g., 0.9). The overall average payment to the BGS Supplier will depend upon BGS demand in each season and, consequently, will likely differ from the Auction clearing price.
5. BGS-FP rates for BGS-FP customers for Post Transition Year 2 will be designed using the methodology as described in each Company Specific Addendum. Bidders will be provided with a spreadsheet that converts a bid into customer rates. Bidders will factor into their bid for multi-year tranches the possibility of rate changes after the end of Post Transition Year 2. This will enable bidders to assess migration risk at various bid levels. BGS-FP rates will reflect market-influenced seasonality and time-of-use indications, where appropriate and feasible, in order to provide efficient price signals.

6. A Clock Auction will also be used to procure supply for BGS-CIEP Load. Beginning August 1, 2003, the larger customers will begin to receive BGS-CIEP service. While this service is appropriate for customers large and sophisticated enough to respond to hourly price signals, the EDCs believe it would be inappropriate to expand the customers on BGS-CIEP at this time.³ Each EDC has defined the customers that will receive the BGS-CIEP service in its Company Specific Addendum.
7. For BGS-CIEP tranches, rate schedules will specify a 0.03¢/kWh payment for the Default Supply Service Availability Charge (DSSAC), a per kW or per kWh rate for the transmission obligation, a per kWh rate for ancillary services, and a provision to pass through the hourly PJM real-time energy price. The capacity charge will be determined through the Auction clearing price and will be converted to rates based upon fixed factors specified by each EDC. BGS-CIEP rates are designed to provide customers with an incentive for demand response to hourly prices. Bidders will indicate how many tranches they want to supply at the going capacity charge in each round of the Auction. The DSSAC will be charged to all customers eligible for BGS-CIEP service and represents the value of the BGS-CIEP option. Winning bidders will be paid the option fee times the monthly sales to all BGS-CIEP eligible customers, whether on BGS-CIEP or not. Additionally, for BGS-CIEP Load, suppliers will receive the daily BGS-CIEP capacity obligation times the clearing capacity charge resulting from the Auction, the daily BGS-CIEP transmission obligation times the transmission rate, the hourly BGS-CIEP Load at the EDC's PJM zone bus times the zone hourly PJM spot price and the ancillary service rate times BGS-CIEP demand. While BGS-CIEP and BGS-FP tranches may be auctioned simultaneously, there will be no switching between BGS-CIEP and BGS-FP tranches. The term of the BGS-CIEP procurement will be for one year beginning June 1, 2004. The entire position will be open as of that date.

³ The Board Staff was the original proponent of this position. The EDCs concur and have filed comments in support of maintaining the current BGS-CIEP eligibility requirements until more experience is gained. This topic is the subject of a separate comment and working group process and will not be addressed further in this filing or the Company Specific Addendum:

8. Each BGS Supplier will be required to assume PJM Load Serving Entity (LSE) responsibility for the portion of BGS Load (whether BGS-CIEP or FP) served by that supplier. In accordance with the PJM Agreements, BGS Suppliers will be physically and/or financially responsible for the day-to-day provision of electricity to BGS customers. This full-requirements service includes the provision of capacity, energy, transmission, ancillary services and any other services as may be required by PJM. The LSE obligations of each BGS tranche are subject to uncertainty and bidders will be required to manage this uncertainty. All BGS customers are free to come and go from the BGS service upon notice requirements that generally require prior notice of 20 days.
9. The detailed commercial terms and conditions under which the BGS Supplier will operate will be set forth in the BGS Supplier Master Agreements. The BGS Supplier Master Agreements are designed to govern the interaction of each EDC and the BGS Suppliers during the period when the BGS Supplier is serving BGS Load. This filing contains the EDCs' final draft BGS Supplier Master Agreements. Last year, Board Staff was instrumental in achieving consensus around contract terms that were adapted to the market and to the business needs of the bidders; this year's Agreements build upon this consensus and the acceptance of last year's BGS Supplier Master Agreements by all BGS Suppliers. Key commercial aspects of the Agreements include:
 - The BGS Supplier, assuming the responsibility of a LSE, will be responsible to PJM for assuring that its commitments to BGS Load have been met.
 - Each EDC will act on behalf of its customers as the procurer and counter party to the BGS Supplier Master Agreements in order to facilitate the transaction, but will not take title to the power in this role.
 - The BGS Supplier Master Agreements are structured to provide for adequate credit protection to protect customers and EDCs from the risk of supplier default and provide a process for suppliers to petition the Board for credit assurances should an EDC's credit situation be a cause for concern.

- The EDCs will provide billing, bill calculation and metering for all BGS customers in their service territory.
 - Suppliers will be responsible for meeting Renewable Portfolio Standards, both those currently in force and any new ones that may be implemented during the supply period. The EDCs will report on the Suppliers' behalf the information related to these standards.
 - Suppliers will be responsible for documenting the environmental characteristics of the energy provided by the BGS Supplier to BGS customers and providing that information promptly to the EDCs. The EDCs will make the required environmental disclosures on the Suppliers' behalf based on this information.
10. In Post Transition Year 1, bidders requested that the EDCs pre-approve alternate corporate guarantees. The EDCs accommodated this request and approved alternate guarantees subject to certain conditions that protect customer interests. Similarly, some bidders sought pre-approval of minor changes to the credit instruments other than guarantees. This year the EDCs will implement windows that allow for pre-approval of alternate guarantees and of minor changes to credit instruments.
11. The EDCs have developed contingency plans, tariff sheets and accounting and cost recovery proposals that are detailed in the Company Specific Addenda. These are essential elements of the EDCs' Auction proposal, and the EDCs request that the Board review and approve these elements of the proposal.
12. The Board will render a decision on the Auction Process and render a decision on the Auction results. The Board will approve or reject in their entirety the results of the BGS-FP Auction and, separately, the results of the BGS-CIEP Auction.
13. The bids at the Auction will represent binding commitments on behalf of bidders and full acceptance of all contract terms. The Board will render a decision on the Auction results by the end of the second full business day after the day on which the Auction

closes. Upon Board approval, Auction results will be a binding commitment on the EDCs.

II. CONDUCT OF THE AUCTIONS

In this section, the EDCs explain aspects of the conduct of the Auctions. The roles of the Board, the Board Advisor, the EDCs and the Auction Manager are explained. The EDCs' proposal for continued confidentiality of sensitive Auction information is presented. Finally, a preliminary timeline for the Auction is provided.

A. The roles of the Board, the Board Advisor, the EDCs and the Auction Manager

1. The Role of the Board

The Year 4 and Post Transition Year 1 Auction Processes have proven successful in achieving the benefit of market-based prices for BGS supply.

The EDCs believe that it is appropriate for the Auction Process to be similar to that approved in the previous Auctions.

The EDCs believe that the Board should again play a substantial role in the Auction. Specifically, the EDCs respectfully recommend that the Board and the Board Advisor be responsible for the following activities:

1. The Board will approve the BGS Auction Process, the Auction Rules, and the EDCs' Company Specific Addenda;
2. The Board will approve the BGS-CIEP Supplier Master Agreement and the BGS-FP Supplier Master Agreement;
3. The Board Advisor will oversee the conduct of the Auction and brief the Board during the Auction process; and,
4. The Board will render a decision on final Auction results by the end of the second business day following the day on which the Auction closes⁴.

⁴ In previous Auctions the approval time frame was two calendar days. The EDCs propose to change this to two business days. This will not have a significant impact on bidders as there is not routine trading in forward energy markets on non-business days.

2. The Role of the EDCs

It is important for the EDCs to work with the Board and with other parties to design a process that assures that supplies for BGS customers are procured at a cost consistent with market conditions, that there is a smooth and seamless transfer of BGS supply from Post Transition Year 1 to Post Transition Year 2 Suppliers, and that adequate protections are in place to assure that the BGS supply provided by competitive suppliers is physically and financially reliable.

In that regard, we believe that it is appropriate for the EDCs to continue to assume the previously approved logistical responsibilities that include:

- Retention of an Auction Manager to administer the Auction.
- Development of the Auction Process, which is presented to the Board in this filing.
- The promotion of the Auction in conjunction with the Auction Manager.
- The supply of the data and other key information that the suppliers would use to prepare their bids that will be made available through an Auction web site maintained by the Auction Manager.
- Provision of follow-up technical support to the Auction Manager in response to specific questions received by bidders with respect to the data and Auction process information and pre-Auction packages.
- Development of the BGS Supplier Master Agreements and instruments for financial guarantees.
- Review and approval of financial qualifications.
- Execution of the BGS Supplier Master Agreements on behalf of their customers.

In addition, the EDCs propose to fund the Board's retention of an independent Advisor to oversee the BGS procurement Auction under the Board's supervision and to advise the Board with respect to interim and final approvals.

3. The Role of the Auction Manager

The EDCs will retain an Auction Manager to administer the Auctions on their behalf and on behalf of the Board. The Auction Manager will be responsible for day-to-day administration, for dissemination of information about the Auction Process and for coordination between the Board with its Advisor, and the EDCs. Further, if necessary, the Auction Manager will be responsible for the development of software that will implement the rules of the Auction.

The Auction Manager would be primarily responsible for the following tasks:

- Setting up and maintaining a web site for the dissemination of Auction information to stakeholders. This Auction information includes application deadlines, information session dates, as well as the information packages prepared by the EDCs and the Auction Manager.
- Receiving queries from interested parties, directing the questions to EDC representatives if necessary, and returning the answers to the asking parties. To maintain fairness and to ensure that all parties have the same information, the Auction Manager will also maintain a database of all questions and answers on the web site.
- Receiving applications for qualification and notifying interested parties of the results of the qualification procedure.
- Receiving indicative offers and bid bonds, ensuring that these are in accordance with the rules and notifying qualified bidders of their initial eligibility.
- Developing and testing bidding procedures that implement the Auction rules.
- Providing technical help to bidders with respect to the Auction rules and the bidding procedures.
- Managing the interface during the Auction, to ensure that Auction parameters such as length of rounds and decrements are set appropriately.
- Developing information packages that bidders will receive at bidder information sessions.
- Drafting manuals for the Auction.
- Reviewing other information required of bidders before and after qualification and resolving issues over associations with the Board Advisor.

- Training potential bidders in the bidding procedures and communication protocols.
- Providing to the Board and the EDCs an interim report after the Part 2 Application and a full factual report on the Auction and on the final results.

In addition, the Auction Manager would support the EDCs and the Board in providing assistance, when appropriate, with the following tasks:

- Promoting the Auction to potential participants.
- Coordinating between the Board with its Advisor, and the EDCs.

The Auction Manager is important to a well-run process, from the promotion of the Auction to the certification of the results, and performs an essential task in developing and testing the bidding procedures for the Auction.

B. Confidentiality of Auction Information

On December 3, 2002, the Board issued an Order in the prior auction, Docket Nos. EX01110754 and EO02070384 in response to a Secretary's letter of November 7, 2002 wherein a list of information was requested by the EDCs to be found exempt from the requirements of the Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 et seq. and the rules promulgated by the Board there under at N.J.A.C. 14:1-12 et seq. The Board found the following information, filed as part of the auction process, resulting from the BGS-FP or the BGS-CIEP Auctions, or provided by market participants for the purposes of participating in the Auctions, to be information that would provide an advantage to competitors or bidders, and deemed it confidential and not included as a government record pursuant to OPRA:

1. EDC specific starting prices (charges) that are in effect for the first round of bidding;
2. Logic processes and algorithms used by the auction manager to determine the starting prices (charges), and volume adjustments during the auction rounds;
3. Indicative offers consisting of the number of tranches a qualified bidder is willing to supply at the maximum (and minimum starting) prices;
4. Auction round prices (charges) and individual bids in each round;

5. Bidder information supplied to qualify for the Auctions from the Part 1 Application:

- The identity of the bidders except for the identity of the winners as released by the Board;
- Information on Bidding Agreements
- Financial and Credit Requirements [except for (i) two most recent credit reports, (ii) most recent SEC Form 10-K, (iii) applicants senior unsecured debt rating from Moody's, Standard and Poor's and Fitch]
- Guarantor's Information
- Justification for Omissions

6. Bidder information supplied to register for the Auctions from the Part 2 Application:

- The identity of the bidders except for the identity of the winners as released by the Board;
- Qualified Bidders Indicative Offer and Calculation of Required Bid Bond;
- Qualified Bidders Preliminary Maximum Interest in Each Product;
- Additional Financial and Credit Requirements;
- Associations and Confidential Information Certifications;
- Justification for Omissions.

Based upon the fact that the auction process for Year 2 of the Post Transition will require the identical information to be supplied, the EDCs request that the Board find and conclude that the foregoing information be deemed non-public proprietary commercial and financial information that would provide an advantage to competitors or bidders and not included as a government record pursuant to OPRA.

C. Regulatory Milestones and Tentative Auction Timeline

The proposed Auction timeline is as follows.

| Timing | Activity or Decision Point |
|--------------------------|--|
| 7/1/2003 | Auction proposal filed |
| 7/1/2003 | EDCs' filing, including provisional Auction rules, posted to Auction web site |
| 7/18/2003 | Discovery request deadline (on EDC proposal) |
| 7/17/2003 | Data Room and other portions of www.bgs-auction.com are fully updated |
| 8/1/2003 | Discovery response deadline |
| 8/8/2003 | Deadline for Alternative Proposals or Initial Comments |
| 8/15/2003 | FAQ first posted to www.bgs-auction.com |
| 8/15/2003 | Discovery request deadline (on non-EDC positions) |
| 8/25/2003 | Discovery response deadline |
| End of August | Legislative Board Hearings |
| 9/9/2003 | Deadline for Final Comments |
| 9/16/2003 | Information Session for Potential Bidders |
| 9/24/2003 | Board Decision on Auction Proposal |
| 10/1/2003 | Compliance Filing |
| 10/8/2003 | Board Decision on Compliance Filing |
| 11/24/2003 | Statewide load cap announced for CIEP Auction; load caps announced for FP Auction |
| 11/24/2003 | Statewide minimum and maximum starting charges (prices) announced for CIEP (FP) Auction |
| 11/24/2003 | Tranche sizes announced |
| 12/4/2003 | Information Session for Potential Bidders |
| 12/16/2003 to 12/19/2003 | Part 1 Applications are reviewed |
| 12/19/2003 | Applicants are notified of Part 1 Application Results |
| 1/9/2004 to 1/16/2004 | Part 2 Applications are reviewed |
| 1/9/2004 to 1/16/2004 | Potential Association issues are reviewed |
| 1/16/2004 | Applicants are notified of Part 2 Application results |
| 1/22/2004 | Tranche Fee is announced |
| 1/22/2004 | Information session for registered bidders |

| | |
|---|---|
| 1/27/2004 | Trial Auctions for registered bidders |
| 1/28/2004 | EDC-specific starting charges and starting prices are announced |
| 2/2/2004 | Auctions start |
| Conclusion of Auctions | Full Factual Report to the Board from the Auction Manager and CRA |
| By end of 2 nd business day after the day on which the last Auction closes | Board decision on Auction results |
| Within three business days of Board Decision | Winning suppliers execute BGS Supplier Master Agreements and other necessary documents |
| 6/1/2004 | Power Flows |

III. BOARD APPROVAL AND EXECUTION OF BGS SUPPLIER AGREEMENTS

The EDCs propose that the Board decide formally whether or not to accept the Auction results within two business days of the day on which the Auction closes. Since the Auction Process would have been previously approved by the Board, accepted bids resulting from the Auction would be presumed reasonable and prudent.

The EDCs recommend that each winning bidder be immediately notified by the Auction Manager of the Board's approval of the Auction results, and that each winning bidder and each EDC be given a period of three business days from receipt of the notification to formally execute the BGS-CIEP and BGS-FP Supplier Master Agreements. The obligations outlined in that Agreement will be part of an irrevocable offer that will become a binding, contractual obligation upon the award of the bid and contract execution will memorialize this commitment.

In other words, the purpose of the review and approval process recommended by the EDCs is for the Board to take the necessary time at the front-end to resolve potentially contentious issues, to provide a mechanism for an expeditious decision from the Board in response to the Auction results, and to provide assurance to suppliers that, once they are notified by the Board that their offer to serve one or more tranches has been accepted, they will indeed be serving that BGS Load. With this overall approach, the risk to suppliers associated with participation in the Auction will best be minimized, thereby helping to mitigate some of the risk premiums that suppliers may include in their offers and thereby reducing costs for customers, and encouraging maximum supplier participation in the Auction.

IV. SUPPLIER MASTER AGREEMENTS

Appendices C and D to the filing contain the final drafts of the BGS Supplier Master Agreements proposed by the EDCs for Post Transition Year 2. The EDCs, through the Auction Manager, will notify all known potential bidders⁵ that these final drafts have been filed and that comments must be provided to the Board. The EDCs propose that on the standard comment schedule, parties to this proceeding and potential bidders have an opportunity to comment on how the Agreements could be improved to be better for BGS customers. The Board could weigh those comments and approve the Agreements in its Order on this filing. As previously discussed, Board Staff was instrumental in helping to implement a process to negotiate the Agreements in Post Transition Year 1. As the Supplier Master Agreements filed here are consistent with the Post Transition Year 1 Agreements, which were accepted by all BGS Suppliers, the EDCs would resolving issues raised in comments. However, the EDCs would again be willing to participate in a Board Staff sponsored dialogue concerning these Agreements.

⁵ Potential bidders may not all be on the Service List in this proceeding, as many elect not to participate in the regulatory aspect of the Auction Process.

V. APPENDIX A

Preliminary Auction Rules for CIEP Auction

VI. APPENDIX B

Preliminary Auction Rules for FP Auction

VII. APPENIDX C

CIEP Suppler Master Agreement

VIII. APPENDIX D

FP Supplier Master Agreement

9.10.03
9.10.03
EPM TC 3600
FINAL SEARCH DATE
DELIVER TO GOVT DATE